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No. 99-__

IN THE

Supreme Court of the United States

MOBIL OIL CORPORATION AND
MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.,
Petitioners,

v.

THE MCMAHON FOUNDATION, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1997, petitioners (collectively, "Mobil") entered into a settlement agreement with the plaintiffs in a nationwide antitrust class action (the *Lovelace* action) brought in Alabama state court. In exchange for valuable consideration, the settlement expressly released *all* claims against Mobil—including federal antitrust claims—arising from the underlying allegations. After carefully reviewing the settlement, the state court entered a judgment embodying the terms of the settlement, including its global release. That judgment is now final. In this federal class action litigation, plaintiffs assert the same federal antitrust claims against Mobil that were expressly released by the *Lovelace* settlement judgment. The Fifth Circuit below, however, refused to give preclusive effect to that judgment, requiring Mobil to defend against or attempt to settle those same claims—again. The questions presented are:

1. Whether the Fifth Circuit properly held—in conflict with *Matsushita Electric Industrial Co.* v. *Epstein*, 516 U.S. 367, 375 (1996)—that the *Lovelace* settlement judgment is not entitled to full faith and credit.

2. Whether the Fifth Circuit properly held—in conflict with the Seventh Circuit—that a lower federal court has no independent obligation to consider whether it lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine to review a state court judgment, if it concludes that the judgment is not entitled to full faith and credit.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Pursuant to S. Ct. Rule 29.6, petitioners Mobil Oil Corporation and Mobil Oil Exploration & Producing Southeast, Inc., defendants-appellants below, note that Mobil Oil Corporation and Mobil Oil Exploration & Producing Southeast, Inc. are wholly-owned subsidiaries of Exxon Mobil Corporation, a publicly held corporation.

This case arises out of four nationwide class actions that were transferred by the Judicial Panel on Multidistrict Litigation to the United States District Court for the Southern District of Texas for consolidated pretrial proceedings. The four consolidated actions are *The McMahon Foundation* v. *Amerada Hess Corporation ("McMahon")*, C-98-048; *Randolph Energy, Inc.* v. *Amerada Hess Corporation ("Randolph Energy")*, C-98-041; *Stanley* v. *Gulf Oil Corporation ("Stanley")*, C-98-068; and *Cameron Parish School District* v. *Texaco, Inc. ("Cameron Parish")*, C-98-111. Additional actions were consolidated with these cases, but they do not name petitioners as defendants.

In addition to petitioners, the parties to the Fifth Circuit proceeding below include the plaintiffs in the *McMahon* and *Stanley* actions. The plaintiffs in *McMahon* are The McMahon Foundation and J. Tom Poyner. The plaintiffs in *Stanley* are James Donald Stanley, Steven E. Crawford, Dorothy Stanley, Brian H. Crawford, Julis West, Howard Walker, Dorothy Walker, Fred West, Mary E. Doby, Lee Vell Faison, Vera Ann Terrell, Wilie M. Terrell, and Airlean Terrell.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Mobil Oil Corporation and Mobil Oil Exploration & Producing Southeast, Inc. (collectively, "Mobil") respectfully petition this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the Fifth Circuit is reported at 200 F.3d 317 and reproduced in the appendix hereto ("App.") at 1a. The

opinion of the District Court for the Southern District of Texas on Mobil's full faith and credit defense is reported at 16 F. Supp. 2d 744 (S.D. Tex. 1998) and reproduced at App. 7a. The order of the District Court issuing the underlying injunction is reproduced at App. 38a.

JURISDICTION

The judgment of the Fifth Circuit was entered on January 11, 2000. App. 1a. The Fifth Circuit denied timely petitions for rehearing and rehearing en banc on February 17, 2000. App. 53a. The jurisdiction of the Fifth Circuit was based on 28 U.S.C. § 1292(a)(1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Full Faith and Credit Act, 28 U.S.C. § 1738, provides in pertinent part:

> The * * * judicial proceedings of any court of any * * * State * * * shall have the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken.

Alabama Code § 12-21-109 provides in pertinent part:

> [A]ll * * * releases * * * and all judgments entered pursuant to * * * settlements, must have effect according to their terms and the intentions of the parties thereto.

These provisions are reproduced in full at App. 54a-55a.

INTRODUCTION

This case presents important and recurring questions concerning the obligation of federal courts to respect state court

settlement judgments and ensure that parties who have released claims for due consideration under a settlement carefully reviewed and approved by state courts may not attempt to relitigate those released claims in federal court, even if those claims are exclusively federal in nature.

The Full Faith and Credit Act provides that the "judicial proceedings" of any state "shall have the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such State * * * from which they are taken." 28 U.S.C. § 1738. The Act ensures the "comity between state and federal courts that has been recognized as a bulwark of the federal system." *Allen* v. *McCurry*, 449 U.S. 90, 96 (1980). In *Matsushita Electric Industrial Co.* v. *Epstein*, 516 U.S. 367, 369 (1996), this Court considered the question "whether a federal court may withhold full faith and credit from a state-court judgment approving a class-action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts." The Court plainly stated that "[t]he answer is no," and held that federal courts are required under the Full Faith and Credit Act to "give [a state court settlement judgment] the same effect that it would have in the courts of the State in which it was rendered." *Id.* Using that approach, the Court concluded that the Delaware settlement judgment at issue releasing exclusively federal claims was entitled to full faith and credit. *Id.* at 378.

The parties here entered into a class action settlement that was carefully reviewed and approved by the Alabama courts. The settlement agreement contains a release of *all* claims against Mobil arising from the operative facts of the underlying suit, which expressly includes the federal antitrust claims at issue here. The Fifth Circuit below, however,

refused to give full faith and credit to the state court judgment embodying that settlement. In direct contravention of *Matsushita*, the court demanded a definitive pronouncement from Alabama law on the preclusive effect of the settlement judgment, even though *Matsushita* specifically instructs federal courts not to insist upon a "direct answer" but rather seek "guidance" from "general state law." *Id.* at 375. Under the inquiry called for by *Matsushita*, Alabama law plainly indicates that the Alabama courts would give effect to the release here. Indeed, by statute, "*all* * * * releases * * * and *all* judgments entered pursuant to * * * settlements" in Alabama "*must* have effect according to their terms." Ala. Code § 12-21-109 (emphases added).

The Fifth Circuit's reading of *Matsushita* reduces that decision to a triviality having little or no application to state court settlement judgments rendered outside Delaware. The Fifth Circuit's decision discourages comprehensive class action settlements, undermines the finality of judgments, upsets the intentions and expectations of settling parties, and promotes unnecessary litigation in the federal courts. The decision squarely conflicts with a decision of this Court and the decisions of other federal courts of appeal. This Court should grant review on the important issues presented here and resolve those conflicts.

STATEMENT OF THE CASE

Mobil, like other oil companies, makes what are known as royalty and working interest payments to individuals and entities based on the production of crude oil and condensate on their property. In 1995, crude oil royalty and working interest owners began filing multiple, overlapping, and competing lawsuits in state and federal courts across the country, alleging that they had been underpaid by a number

of oil companies, including Mobil. Most of these suits have been brought as class actions—some statewide, others nationwide in scope—and although most of them are based on state law contract theories, a number of them assert federal and state antitrust claims.

In April 1996, plaintiffs purporting to represent a nationwide class of crude oil royalty and working interest owners filed an action, *The McMahon Foundation* v. *Amerada Hess Corporation* ("*McMahon*"), in the United States District Court for the Southern District of Texas against 39 oil companies, including Mobil, alleging that the defendants had conspired to fix the price of crude oil below competitive levels in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. *McMahon* was essentially the first action to assert an antitrust conspiracy claim. Defendants promptly moved to dismiss the action for failure to state a claim, arguing that plaintiffs had not sufficiently pleaded the existence of such a conspiracy.

In September 1996, while defendants' motion to dismiss was pending in the *McMahon* action, a different set of plaintiffs filed in Alabama state court a nationwide class action, *Lovelace* v. *Amerada Hess Corporation*, CV-96-297 (Cir. Ct., Escambia County, Ala.) against substantially the same group of defendants, including Mobil, challenging the same price-fixing conspiracy alleged in *McMahon*. Shortly after the *Lovelace* action was filed, defendants attempted to remove it to federal court in an effort to consolidate the actions, but in April 1997 the United States District Court for the Southern District of Alabama remanded the case to state court. It is undisputed that the *McMahon* and *Lovelace* actions are based on the same operative facts, and are identi-

cal but for the *Lovelace* plaintiffs' election to proceed under state, rather than federal, antitrust law.

Shortly before *Lovelace* was remanded back to state court, a magistrate judge recommended that defendants' motion to dismiss in the *McMahon* case be granted for failure to state a claim. While this recommendation was pending, Mobil approached the plaintiffs in the *Lovelace* action—at the time, the only viable nationwide class action pending against it—to discuss settlement. After protracted, arms-length negotiations, Mobil and the *Lovelace* plaintiffs reached an agreement, pursuant to which Mobil agreed to prospectively alter its method for calculating crude oil valuation for royalty and working interest purposes, to provide certain information to the *Lovelace* plaintiffs, and to pay $15 million to the settlement class. In exchange, the *Lovelace* settlement class agreed to release Mobil from *all* claims relating to crude oil valuation—including federal antitrust claims—and expressly referenced the federal antitrust claims against Mobil in *McMahon*. Through the *Lovelace* settlement, Mobil believed it had achieved what it had bargained for—a comprehensive, nationwide resolution of all claims arising out of the alleged royalty and working interest underpayment scheme.

On May 14, 1997, the Alabama trial court preliminarily approved the *Lovelace* settlement. In accordance with the court's order, notice of the settlement was mailed to absent class members identified from Mobil's records. The notice described the settlement and informed class members of their right to object to it, to participate at a fairness hearing, and to opt out of the settlement class. The notice also specifically informed them that the claims asserted in the *McMahon* action, as well as several others, would be released as part of the settlement. In addition, the *Lovelace* plaintiffs published

a summary notice in nearly 50 newspapers across the country, and posted both the mailed and summary notices on the Internet. Less than one percent of settlement class members exercised their right to opt out of the settlement class.

Shortly thereafter, the Alabama court conducted three days of adversarial hearings on whether the settlement class should be certified and, if so, whether the settlement was fair, reasonable, and adequate. The court received voluminous evidence on the adequacy of the settlement, and specifically heard objections concerning the breadth of the release—*i.e.*, its release of all claims against Mobil based on the alleged royalty and working interest underpayment scheme, including federal antitrust claims—as well as evidence of Mobil's intent to seek full faith and credit for the judgment embodying the release pursuant to *Matsushita*.

On December 12, 1997, the Alabama court issued a 66-page decision containing detailed findings of fact and conclusions of law, and entered a judgment approving and incorporating the settlement, including its global release. Among other things, the court overruled all objections and found that the settlement agreement provided substantial compensation to the settlement class, that the class received sufficient consideration for the release of all crude oil valuation claims against Mobil, including federal antitrust claims, and that the release was intended to bar claims in other pending actions. In so finding, the court expressly concluded:

> [A] class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint. *Even if a Court does not have the power to adjudicate the claim, it may still*

> *approve release of the claim as a condition of the settlement.* [5th Cir. Rec. 460 (emphasis added).]

The Alabama Supreme Court ultimately dismissed all appeals from the *Lovelace* judgment, and the judgment is final in all respects.

While the *Lovelace* settlement was awaiting final approval, crude oil royalty and working interest owners filed three other nationwide class actions challenging on federal antitrust and other grounds the *same* royalty and working interest underpayment scheme alleged in *McMahon* and *Lovelace*. The putative classes identified in each of these actions is essentially the same as the *Lovelace* settlement class. In January 1998, the Judicial Panel on Multidistrict Litigation transferred these class actions to the United States District Court for the Southern District of Texas for consolidation along with *McMahon*.[1] Mobil moved to dismiss all or nearly all claims in each of these actions on the ground that they were barred under the Full Faith and Credit Act, 28 U.S.C. § 1738, by the *Lovelace* settlement judgment. Mobil also argued that the federal courts lacked jurisdiction over the federal antitrust claims against it under the *Rooker-Feldman* doctrine, since the only way the federal courts could permit those claims to proceed was collaterally to review—and reject—the Alabama courts decision to approve the release of those claims as part of the *Lovelace* settlement.

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[1] The actions consolidated with *McMahon*, C-98-048, are *Randolph Energy, Inc.* v. *Amerada Hess Corporation*, C-98-041; *Stanley* v. *Gulf Oil Corporation*, C-98-068; *Cameron Parish School District* v. *Texaco, Inc.*, C-98-111. Other actions consolidated with this litigation did not name Mobil as a defendant.

On June 5, 1998, the District Court issued a decision denying Mobil's motions to dismiss and holding that the *Lovelace* judgment was *not* entitled to preclusive effect. *See* App. 7a. At the same time, however, the court acknowledged that "there is a substantial ground for difference of opinion as [to] the preclusion issues decided in this order," and accordingly certified the issues for immediate appeal. App. 36a. In addition, on the basis of its ruling on the preclusion issues, the District Court extended to Mobil an April 3, 1998 order—from which Mobil had been previously exempted—enjoining the parties to the consolidated litigation from entering into any settlement purporting to release the federal antitrust claims asserted in that action without the court's approval. That injunction remains in effect. *See* App. 38a.

Mobil appealed the District Court's orders under 28 U.S.C. § 1292(a)(1). On January 11, 2000, the Fifth Circuit issued a decision affirming the District Court's rulings. Although the court correctly recognized that under this Court's decision in *Matsushita*, "a federal court must give effect to a state court approval of a class action settlement, even if the settlement releases federal claims within the exclusive jurisdiction of the federal courts, as long as the law of the state would give preclusive effect to the judgment," App. 4a, the court nevertheless rejected Alabama law plainly indicating that the Alabama courts would give preclusive effect to the *Lovelace* judgment, and thus refused to give effect to the express terms of the judgment releasing federal antitrust claims against Mobil. App. 5a. Without engaging in any independent analysis of the basic jurisdictional limitation drawn by *Rooker-Feldman*, the Fifth Circuit also dismissed Mobil's

Rooker-Feldman defense on the ground that it was "not distinct" from the full faith and credit issue. App. 3a n.1.

Mobil timely petitioned for rehearing and rehearing en banc, and requested that—at a minimum, in light of the undeniable importance of the issue—the court certify the question to the Alabama Supreme Court. The Fifth Circuit refused to do so. This petition followed.[2]

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT'S DECISION IRRECONCILABLY CONFLICTS WITH THIS COURT'S DECISION IN *MATSUSHITA* ON THE PRECLUSIVE EFFECT OF STATE COURT CLASS ACTION SETTLEMENT JUDGMENTS.

The Fifth Circuit's decision directly conflicts with this Court's decision in *Matsushita*. In that case, this Court held

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[2] On August 12, 1999, while Mobil's interlocutory appeal was pending before the Court of Appeals, the District Court entered final judgments in the consolidated litigation approving settlement agreements between class plaintiffs and certain defendants, including Mobil. The Mobil settlement agreement expressly reserves to Mobil the right to pursue an appeal of its full faith and credit defense. *See* Agreement ¶¶ 2.1(b), 2.3(e). Moreover, the agreement expressly excludes from the definition of "Settled Claims" all "claims which were extinguished by settlements with [Mobil] that were final or pending court approval as of November 30, 1998." *See* Agreement ¶ 1.15(b)(ii). It is undisputed that the *Lovelace* judgment was final as of that date. If the *Lovelace* judgment is given preclusive effect, then nearly all of the claims against Mobil in the consolidated litigation will have been extinguished, leaving fewer class claims to share in the Mobil settlement. The preclusive effect of the *Lovelace* settlement judgment (including the subsidiary issue as to the jurisdiction of the federal courts to collaterally review that judgment) therefore remains a live issue in this litigation.

that a federal court may not "withhold full faith and credit from a state-court judgment approving a class-action settlement simply because the settlement releases claims within the exclusive federal jurisdiction of the federal courts." 516 U.S. at 369.[3] Rather, "[w]hen faced with a state-court judgment relating to an exclusively federal claim, a federal court must first look to the law of the rendering State to ascertain the effect of the judgment." *Id.* at 375. "If state law *indicates* that the particular claim or issue would be barred from litigation in a court of that State," then a federal court must also give effect to the settlement judgment. *Id.* (emphasis added).[4]

The *Matsushita* Court specifically cautioned that "the inquiry into state law [will] not always yield a *direct* answer." *Id.* (emphasis added). The reason is obvious: "Usually, a state court will not have occasion to address the specific question whether a state judgment has issue or claim preclusive effect in a later action that can be brought only in federal court," *id.* (quotation omitted), since exclusively federal claims, by definition, cannot be brought in state court. Accordingly, the *Matsushita* Court instructed federal courts to seek "guidance" from "general state law" on the preclusive force of settlement judgments, and not insist upon an answer to the specific question which is not likely to arise. *Id.*

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[3] Exclusively federal claims include: admiralty, 28 U.S.C. § 1333; antitrust, 15 U.S.C. § 1; commodity exchanges, 7 U.S.C. § 25(c); CERCLA, 42 U.S.C. § 9613(b); patent and copyright, 28 U.S.C. § 1338; and securities, 15 U.S.C. § 78aa.

[4] A federal court must do so "[a]bsent a partial repeal of the Full Faith and Credit Act * * * by another federal statute." 516 U.S. at 369. It is undisputed that the federal antitrust laws have not partially repealed the Full Faith and Credit Act.

Using that approach, the Court concluded that the Delaware settlement judgment at issue would be afforded preclusive effect by the Delaware courts and, thus, was entitled to the same treatment by the federal courts. *Id.* at 378.

The Court of Appeals below correctly recognized that, under *Matsushita*, "a federal court must give effect to a state court approval of a class action settlement, even if the settlement releases federal claims within the exclusive jurisdiction of the federal courts, as long as the law of the state would give preclusive effect to the judgment." App. 4a. But the court then proceeded—in direct contravention of *Matsushita*—to insist upon a "direct answer" from Alabama law, rejecting the ample "guidance" provided by Alabama law indicating that the *Lovelace* judgment would be given effect by the Alabama courts. In the end, the court not only erroneously denied full faith and credit to the state court settlement judgment in this case, but seriously eroded the force of *Matsushita*.

This case is straightforward under the inquiry called for by *Matsushita*. Alabama law plainly indicates that the Alabama courts would give the *Lovelace* judgment preclusive effect by either enforcing the express intent of the parties to release all claims (including the federal antitrust claims at issue here), or holding that subsequent litigation of claims within the scope of the settlement is barred under the doctrine of res judicata.[5] By statute, "*[a]ll* * * * releases * * * and *all* [settlement] judgments * * * must have effect according to their terms and the intentions of the parties thereto." Ala. Code § 12-21-

[5] This Court made clear in *Matsushita* that a settlement judgment may be given preclusive effect either as a matter of state contract or res judicata law. *See* 516 U.S. at 380 n.6.

109 (emphases added). Expressly invoking the statute, the Alabama courts have unfailingly barred litigation of claims released by the express terms of settlement judgments. *See, e.g.*, *Nix* v. *Henry C. Beck Co.*, 572 So.2d 1214, 1216 (Ala. 1990); *Johnson* v. *Asphalt Hot Mix*, 565 So.2d 219, 220 (Ala. 1990). There is no indication that the Alabama courts would intend the release of an exclusively federal claim to be treated any differently—in fact, every indication is to the contrary.

To begin with, the *Lovelace* court itself specifically determined that "a class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint." 5th Cir. Rec. 460. With knowledge of Alabama law, the court expressly held that "*[e]ven if a Court does not have the power to adjudicate the claim, it may still approve release of the claim as a condition of the settlement.*" *Id.* (emphasis added). Nevertheless, the Fifth Circuit refused to follow this "guidance" indicating that the Alabama courts would give effect to the *Lovelace* settlement judgment. That was error under *Matsushita*.

Alabama law provides still more guidance indicating that the *Lovelace* judgment would be given effect. For instance, in *Adams* v. *Robertson*, 676 So.2d 1265, 1296-97 (Ala. 1995), *cert. dismissed as improvidently granted*, 520 U.S. 83 (1997), the Alabama Supreme Court affirmed a class action settlement judgment releasing all claims that had been or conceivably might be brought to recover from an alleged insurance fraud. In approving the release, the trial court expressly held that "[e]ven where a court does not have the power to adjudicate a claim, it may still approve release of

that claim as a condition of settlement of an action before it." *Id.* at 1300. The Alabama Supreme Court "thoroughly review[ed] the trial court's findings of fact and conclusions of law," and affirmed the settlement judgment, appending the trial court's findings of fact and conclusions of law to its decision. *Id.* at 1273.

Thus, *Adams*—like *Lovelace* itself—clearly recognizes the authority of Alabama courts to approve class action settlement judgments releasing all claims, including those over which the Alabama courts lack jurisdiction to adjudicate. Indeed, the Alabama courts' detailed inquiry into the fairness of the *Adams* settlement judgment—including its global release—would have been meaningless if the settlement could not be enforced in accordance with the parties' express intent, as Alabama law requires. Both *Adams* and *Lovelace* therefore provide a clear indication that the Alabama courts would give preclusive effect to a class action settlement judgment releasing exclusively federal claims. Requiring a more affirmative statement from Alabama law directly contravenes *Matsushita*.

Despite the clear indication provided by *Adams* that the Alabama courts would give effect to the *Lovelace* judgment, the Court of Appeals below dismissed the *Adams* decision out of hand, contending that the settlement in that case "settled no federal claims," and that the Alabama Supreme Court "decided no preclusion issues." App. 5a. The court's first contention is erroneous, and its second misses the mark. As the trial court in *Adams* expressly noted, the release was broad enough to cover "not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the

complaint," including claims the court did not "have the power to adjudicate." 676 So.2d at 1300. Thus—contrary to the Fifth Circuit's determination—the *Adams* settlement *did* release all federal claims that might conceivably arise out of the facts of that case.

The fact that the Alabama Supreme Court did not specifically address the preclusive effect of the judgment with respect to federal claims is of no consequence. As discussed, the *Matsushita* Court specifically admonished federal courts not to insist upon a "direct answer" from state law because "[u]sually, a state court will not have occasion to address the [issue]." 516 U.S. at 375 (quotation omitted). The Fifth Circuit was not free, therefore, to disregard *Adams* merely because the Alabama Supreme Court did not address the preclusive effect of the settlement it approved. Nor should the court have lightly tossed aside, App. 5a, the trial court's statement in *Adams*—appended to and incorporated in the Alabama Supreme Court's decision approving the settlement—that it had the power to release claims it could not adjudicate. *See, e.g.*, *Commissioner* v. *Estate of Bosch*, 387 U.S. 456, 465 (1967).

The Fifth Circuit below also rejected *Adams* on the ground that the decision "is not precedent for the proposition that Alabama embraces a pure contract law approach to preclusion." App. 5a. But that was never Mobil's contention, and the court misconstrued the interrelationship between Alabama release and res judicata law. Mobil relied on both areas of Alabama law to show that the Alabama courts would give preclusive effect to the *Lovelace* judgment because it incorporated a release expressly extinguishing the federal claims at issue here. Where, as here, all the elements of res judicata are met, the Alabama courts have recognized that class action

settlement judgments are entitled to preclusive effect in subsequent actions seeking to litigate claims subsumed within the settlement judgment or accompanying release. *See, e.g.*, *Martin* v. *Drummond Co.*, 663 So.2d 937, 948 (Ala. 1995), *cert. denied*, 516 U.S. 1157 (1996); *J.C. Bradford Co.* v. *Calhoun*, 612 So.2d 396, 397-398 (Ala. 1992). Thus, the Alabama courts would also give effect to the *Lovelace* judgment as a matter of Alabama res judicata law.

Not surprisingly, a state's res judicata law and release law will often overlap and both shed light on what claims are barred by prior litigation. *See Nottingham Partners* v. *Trans-Lux Corp.*, 925 F.2d 29, 31-32 (1st Cir. 1991) ("It is beyond cavil that a suit can be barred by the earlier settlement of another suit in either of two ways: res judicata or release."). Nothing in *Matsushita* suggests that in determining the "effect of the judgment," 516 U.S. at 375, in a particular state, a federal court should look *only* to one doctrine (res judicata) or another (release). Under *Matsushita*, federal courts are supposed to look to state law for "guidance," not parse that law to reach a particular result. *Id.* This Court should grant certiorari to clarify that in applying *Matsushita* federal courts must survey the entire field of state preclusion law, not just selected areas, in determining what effect state courts would give to a settlement judgment embodying a global release.

Alabama res judicata law—like that of every state of which we are aware—has a prior jurisdictional competency requirement. The Fifth Circuit refused to give preclusive effect to the *Lovelace* judgment under Alabama res judicata law because it could find "no indication that Alabama has abandoned its [prior] jurisdictional [competency] requirement for judicially-approved settlements." App. 6a. But again, that is

because the Court of Appeals demanded a "direct answer" from Alabama law on this point.

In *Matsushita*, the Court relied on the fact that the Delaware courts had "a history of approving settlements that have implicitly or explicitly included a general release, which would also release federal claims," in concluding that the Delaware courts had abandoned the prior jurisdictional competency requirement with respect to class action settlement judgments. 516 U.S. at 377 (quotation omitted). The Alabama courts likewise have a history of approving settlements "implicitly or explicitly" including a general release, "which would also release federal claims." *See, e.g., Adams*, 676 So.2d at 1296-97; *Cavender* v. *State Mut. Ins. Co.*, 748 So.2d 863, 866 (Ala. 1999) (class action settlement releasing all claims relating to alleged insurance fraud); *McNeely* v. *Spry Funeral Homes of Athens, Inc.*, 724 So.2d 534, 537 (Ala. Civ. App. 1998) (class action settlement releasing claims arising under state or federal law). That is certainly enough "guidance" that Alabama courts would give preclusive effect to a settlement judgment releasing claims that could not have been adjudicated by an Alabama court.

In determining that the Delaware courts had abandoned the prior jurisdictional competency requirement, the *Matsushita* Court also relied heavily on the Delaware Supreme Court's statement in *Nottingham* that

> in order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented *and might not have been pre-*

> *sentable in the class action.* [516 U.S. at 376-77 (quotation omitted) (emphasis added).]

This statement is remarkably similar to those made by the Alabama courts in *Adams* and *Lovelace* in approving class action settlements containing global releases of *all* claims arising out of the operative nucleus of facts. As discussed, in *Adams*, the court stated:

> The Court concludes that a class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint. *Even where a court does not have the power to adjudicate a claim, it may still approve release of that claim as a condition of settlement of an action before it.* [676 So.2d at 1300 (emphasis added).]

Similarly, in approving a class action settlement explicitly releasing the federal antitrust claims at issue here, the *Lovelace* court made a virtually identical statement:

> [A] class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint. *Even if a Court does not have the power to adjudicate the claim, it may still approve release of the claim as a condition of the settlement.*" [5th Cir. Rec. 460 (emphasis added).]

Although such pronouncements were enough to satisfy this Court in *Matsushita* that Delaware had abandoned the prior jurisdictional competency requirement with respect to class action settlement judgments, they were not enough for the Fifth Circuit below.

Under the Fifth Circuit's overly searching approach, no state court class action settlement—except perhaps those approved by Delaware courts—can release exclusively federal claims unless the law of the rendering state contains a *definitive* statement regarding the preclusive effect of the settlement judgment with respect to exclusively federal claims. That approach not only conflicts with *Matsushita*, but turns the federalism that the Full Faith and Credit Act was designed to promote on its head. Instead of following the "guidance" provided by "general state law," federal courts—under the Fifth Circuit's decision—must insist upon affirmative statements of state law concerning a hypothetical question that *Matsushita* recognizes is not likely to arise in state court. The court's decision thus renders *Matsushita* virtually meaningless outside Delaware. This Court should grant certiorari here to prevent the erosion of *Matsushita* by ensuring that federal courts apply the correct inquiry called for by that decision.

II. THE FIFTH CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL CIRCUITS ON THE APPLICATION OF THE *ROOKER-FELDMAN* DOCTRINE.

The Fifth Circuit's decision also conflicts with the decisions of other federal circuits on the second question presented by this petition—whether in refusing to give effect to the express terms of the *Lovelace* settlement judgment, the Fifth Circuit properly dismissed Mobil's *Rooker-Feldman* defense. This conflict provides an alternative basis for granting certiorari. *See Braxton* v. *United States*, 500 U.S. 344, 347 (1991) (a "principal purpose for which we use our certiorari jurisdiction * * * is to resolve conflicts among the United States courts of appeals"); S. Ct. Rule 10(a).

The *Rooker-Feldman* doctrine—which derives from *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983)—rests on the understanding that in our federal system only this Court has jurisdiction to review state court judgments, and that the inferior federal courts lack such jurisdiction. As this Court recently reaffirmed, *Rooker-Feldman* thus prohibits federal district courts from exercising "what in substance would be appellate review of" a state court judgment or findings. *Johnson* v. *De Grandy*, 512 U.S. 997, 1005-06 (1994). The doctrine applies not only to issues squarely decided by a state court judgment, but also to issues that are "inextricably intertwined" with the judgment, *Feldman*, 460 U.S. at 486, since a federal court cannot decide such issues without effectively reviewing the judgment itself. *See Brown & Root, Inc.* v. *Breckenridge*, __ F.3d __, 2000 WL 526068, at *3 (4th Cir. May 2, 2000); *Remer* v. *Burlington Area Sch. Dist.*, 205 F.3d 990, 996 (7th Cir. 2000).

The federal circuits are divided on whether *Rooker-Feldman* provides a separate defense from the Full Faith and Credit Act to federal district court review of a state court judgment. As the Court of Appeals acknowledged below, the Fifth Circuit "has interpreted [the *Rooker-Feldman*] doctrine as consistent with the Full Faith and Credit Act," so that "the two arguments are *not distinct*" in challenging federal district court review of a state court judgment. App. 3a n.1 (emphasis added). *See American Airlines, Inc.* v. *Department of Transp.*, 202 F.3d 788, 801 n.9 (5th Cir. 2000) ("we have not applied the *Rooker-Feldman* jurisdictional bar in cases where we have found it inappropriate to require a federal court to give full faith and credit to a state court judgment") (citing *Gauthier* v. *Continental Diving Servs., Inc.*, 831 F.2d 559, 561 (5th Cir. 1987)), *petition for cert. filed*, 68 U.S.L.W.

3577 (Mar. 3, 2000) (No. 99-1462); *accord Davis* v. *Bayless*, 70 F.3d 367, 375 (5th Cir. 1995).

As a result, the Fifth Circuit rejected Mobil's *Rooker-Feldman* argument *solely* on the basis of its conclusion that the *Lovelace* settlement judgment was not entitled to full faith and credit. *See* App. 3a n.1. Thus, the Court of Appeals never accounted for the fact that, in refusing to give effect to the express terms of the *Lovelace* settlement judgment, the District Court in effect was required to review and reject the state court findings—inextricably bound up with the settlement judgment—that (1) the Alabama courts had jurisdiction to approve the express release of federal claims over which they lacked jurisdiction; and (2) the settlement judgment (including its express release of the very claims at issue is this case) was entitled to judicial approval. These findings went to the heart of the state courts' duty under state law, not to mention the Due Process Clause, to determine whether the proposed class action settlement judgment was fair and, thus, entitled to the court's imprimatur. Under *Rooker-Feldman*, the findings accordingly may not be second-guessed—let alone disregarded—by a federal district court.

In stark contrast to the Fifth Circuit, the Seventh Circuit holds that the *Rooker-Feldman* and full faith and credit doctrines "are *not coextensive*," and that, in fact, "[t]he *Rooker-Feldman* doctrine * * * has *nothing* to do with § 1738," since it is based on the jurisdictional limits of the inferior federal courts. *GASH Assocs.* v. *Village of Rosemont, Ill.*, 995 F.2d 726, 728 (7th Cir. 1993) (emphases added). *See also Remer* v. *Burlington Area Sch. Dist.*, 205 F.3d at 996-1000 (separately analyzing *Rooker-Feldman* and full faith and credit claims); *Garry* v. *Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996) (whereas the "Full Faith and Credit

Statute * * * requires federal courts to give state court judgments the same effect that the rendering state would, *Rooker-Feldman* is based on the separate principle that only the Supreme Court has appellate jurisdiction over the civil judgments of state courts").

As a result, whereas the Fifth Circuit below summarily rejected Mobil's *Rooker-Feldman* argument on the basis of its full faith and credit analysis, the Seventh Circuit would have separately analyzed this jurisdictional defense first. *See Garry*, 82 F.3d at 1365 ("We have consistently emphasized the distinction between res judicata and *Rooker-Feldman* and insisted that the applicability of *Rooker-Feldman* be decided before considering res judicata."). Moreover, in doing so, the Seventh Circuit would have applied federal law (*i.e.*, *Rooker-Feldman* principles) rather than looking solely to state preclusion law. *See id.* at 1367 n.8 (while "*Rooker-Feldman* is entirely federal and requires no reference to principles of state law," the full faith and credit analysis turns largely on reference to state law); David P. Currie, *Res Judicata: The Neglected Defense*, 45 U. Chi. L. Rev. 317, 324 (1978) (same). The Fifth Circuit below never even considered whether federal *Rooker-Feldman* principles—bearing directly on its subject matter jurisdiction—compelled a different result than the Full Faith and Credit Act.[6]

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[6] The Seventh Circuit is not alone in its treatment of *Rooker-Feldman*. In *United States* ex rel. *Robinson Rancheria Citizens Council* v. *Borneo, Inc.*, 971 F.2d 244, 253 (9th Cir. 1992), the Ninth Circuit similarly recognized that even if state court judgment were not entitled to preclusive effect under state preclusion law, *Rooker-Feldman* would still bar the federal courts from entertaining a federal suit designed to circumvent the state judgment, since "[w]e could hardly ignore that judgment without first reviewing it and deciding that it was invalid." Judge Reinhardt disagreed, arguing—unsuccessfully—that "[i]f the full

Kamilewicz v. *Bank of Boston Corp.*, 92 F.3d 506 (7th Cir. 1996), *cert. denied*, 520 U.S. 1204 (1997), underscores the force of those federal jurisdictional principles. In that case, the court of appeals held that *Rooker-Feldman* barred a federal court action brought by members of a state court class action resulting in a settlement judgment, where the federal action attacked the terms of the state court settlement judgment and, in particular, its provision for attorney's fees. While the federal plaintiffs had attempted to cloak this attack in federal terms, the court of appeals recognized that at the end of the day plaintiffs simply sought to challenge the state court "approval of the settlement regarding the attorney fees issue." *Id.* at 511. Thus, the Seventh Circuit recognized that the "federal claims are 'inextricably intertwined' with the state court judgment [approving the settlement], whether that judgment is right or wrong," and held that the *Rooker-Feldman* doctrine accordingly barred this collateral attack on the state court settlement judgment. *Id.*[7]

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faith and credit statute does not bar a refusal to accord preclusive effect to a particular state court judgment," then *Rooker-Feldman* cannot be invoked to prevent the federal courts from collaterally reviewing that judgment either. *Id.* at 257 n.3 (concurring in part and dissenting in part).

[7] *Kamilewicz* is different from this case in that the plaintiffs there arguably were not properly within the jurisdiction of the state court rendering the settlement judgment, due to notice and other alleged jurisdictional defects. This case does not present those concerns. Citing these jurisdictional concerns, five judges dissented from the denial of rehearing en banc in *Kamilewicz*, arguing, *inter alia*, that "[c]ollateral attacks based on or subject-matter jurisdiction are proper," and that "a judgment that is not entitled to full faith and credit does not acquire extra force via the *Rooker-Feldman* doctrine." 100 F.3d 1348, 1350 (7th Cir. 1996) (Easterbrook, J., dissenting from denial of rehearing en banc). The dissenters sought to draw support for this position from this Court's *Matsushita* decision. As they acknowledged, however, *Matsushita* did

As the *Kamilewicz* court further explained: "[T]he state court approved the settlement, including the fees. The Supreme Court of Alabama or the United States Supreme Court could reverse the decision were either so inclined. The federal district court, on the other hand, cannot review the Alabama decision." *Id.* at 512. So too here. The state courts carefully reviewed and approved the *Lovelace* settlement judgment, including the provision expressly releasing plaintiffs' federal antitrust claims. Plaintiffs were free to challenge that determination in the Alabama Supreme Court and even this Court. But the *Rooker-Feldman* doctrine prevents plaintiffs from bypassing those forums and, instead, effectively seeking review of the state court judgment in federal district court by claiming that the settlement judgment is not entitled to be enforced according to its express—and state court approved—terms.[8] The Fifth Circuit, however, never

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"not discuss," let alone purport to decide, the interrelationship between the *Rooker-Feldman* doctrine and the Full Faith and Credit Act. *Id.* *Rooker-Feldman* is not even mentioned in *Matsushita*, and was not included within the question presented. In any event, with both the *Rooker-Feldman* and full faith and credit defenses squarely presented here, this case provides an ideal vehicle to resolve this confusion by clarifying the interrelationship between these two doctrines.

[8] In *In re General Motors Corp. Pick-Up Truck Fuel Tank Products. Liability Litigation*, 134 F.3d 133 (3d Cir. 1998), the Third Circuit similarly held that under the *Rooker-Feldman* doctrine the inferior federal courts lacked jurisdiction to entertain a federal action brought by parties to a state court class action proceeding resulting in a settlement judgment. As the court of appeals explained, "in order for us to grant appellants' requested relief, we would first have to determine that the state court judgment was erroneously entered. *Rooker-Feldman* bars exactly this sort of intermediate appellate review of state court judgments and divests this Court of subject matter jurisdiction of this appeal." *Id.* at 143 (citation omitted). The same goes here, where the only fair way to reach the conclusion that the state courts would not give effect to the terms of

even considered this basic jurisdictional bar to this action because in the Fifth Circuit—quite unlike the Seventh—the *Rooker-Feldman* limit and full faith and credit defense "are not distinct." App. 3a n.1.

This direct circuit conflict has not been lost on the lower courts. *See Chafin* v. *West Virginia Sup. Ct. of App.*, 1998 WL 1297605, at *6 (S.D.W.Va. Dec. 18, 1998) ("The Fifth Circuit's approach, which treats the *Rooker-Feldman* doctrine and full faith and credit principles as coextensive, obviously is in direct conflict with the Seventh Circuit's approach," which does not), *aff'd*, 203 F.3d 819 (4th Cir. 2000); *Hachamovitch* v. *DeBuono*, 159 F.3d 687, 696 (2d Cir. 1998) ("Whether the *Rooker-Feldman* doctrine is coextensive with preclusion or extends beyond preclusionary rules is a question that has perplexed courts and commentators."); *see also* Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, 74 Notre Dame L. Rev. 1085, 1089-90 (1999) (noting the confusion over the interrelationship between the *Rooker-Feldman* doctrine and the Full Faith and Credit Act, and arguing that "preclusion law and *Rooker-Feldman* serve

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the *Lovelace* settlement judgment is to conclude that the courts erroneously approved that judgment—precisely the sort of inquiry proscribed by *Rooker-Feldman*. The *General Motors* court also held in the alternative that the settlement judgment was entitled to full faith and credit, but it did not address the interrelationship between the *Rooker-Feldman* and full faith and credit doctrines. *See also Snider* v. *City of Excelsior Springs, Mo.*, 154 F.3d 809, 812 (8th Cir. 1998) (under *Rooker-Feldman*, federal district court lacks jurisdiction to adjudicate federal claims based on state condemnation proceeding because adjudicating those claims would effectively place federal court in position of reviewing state court judgment approving condemnation).

different purposes"). The Court should grant certiorari and resolve this basic conflict.

III. THE QUESTIONS PRESENTED ARE IMPORTANT AND RECURRING.

Although the conflicts engendered by the Fifth Circuit's decision alone provide a compelling basis for review, certiorari is particularly appropriate given the undeniable importance and recurring nature of the questions presented. *See Matsushita*, 516 U.S. at 373 (acknowledging that this is an "important area of federal law"); Sherry, *supra*, at 1088-89 ("Since 1990 alone, lower federal courts have used *Rooker-Feldman* to find jurisdiction lacking in more than 500 cases. At the same time, the lower courts have struggled to define both the doctrine and its relationship to other doctrines," including full faith and credit).

Little need be said about the virtues of simplifying and resolving complex litigation. Class actions are useful vehicles primarily because they enable the adjudication or settlement of numerous individual claims in a single judicial proceeding. Settlements are important mechanisms for resolving class action disputes, permitting class members to aggregate their claims to obtain fair value in exchange for foregoing their right to proceed to trial. Similarly, the aggregation of claims permits defendants to resolve all claims against them in a single action, thereby avoiding the cost and burden of multiple lawsuits raising the same issues.

Defendants in state court class actions are not likely to settle unless they receive a release of *all* potential claims against them—including exclusively federal claims—that will prevent counsel representing members of the settlement class from filing additional lawsuits based on the same set of

facts.[9] Certainly a defendant would not settle a state court class action where its exposure on federal *and* state law claims does not exceed exposure of just the federal claims. *See* Kahan & Silberman at 247.

By refusing to respect the express terms of the release embodied in the state court settlement judgment at issue in this case, the Fifth Circuit's decision will discourage defendants from settling state court class actions, thus undermining the strong public policy favoring settlements, particularly in class actions. *See In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits."). At the same time, the decision will drive class action litigation into the federal courts—where global disposition may be achieved—making federal courts forums for litigation of state law claims merely because the events at issue might also form the basis for an exclusively federal claim.

The decision also upsets the expectations and intentions of parties, such as Mobil, who have entered into settlements to bring an end to litigation and *all* potential claims that might be brought against them. By permitting class members to obtain the benefits of a settlement in state court and then turn around and litigate released claims in federal court, the decision unfairly denies class action defendants the benefit of their bargain. And by threatening the finality of state class

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[9] *See, e.g.*, Marcel Kahan & Linda Silberman, Matsushita *and Beyond: The Role of State Courts in Class Actions Involving Exclusive Federal Claims*, 1996 Sup. Ct. Rev. 219, 246 ("It is commonly asserted that a defendant would not be willing to settle a case unless the settlement releases all—state and federal—claims that could be brought. If a state court cannot release the defendant from liability under the federal claims, settlement of a state class action would thus be impeded.").

action settlements releasing exclusively federal claims that are not time-barred, the decision further undermines the strong policy in promoting the finality of judgments.

Perhaps most fundamentally, the Fifth Circuit's decision undermines the Full Faith and Credit Act and the important principles of federalism and comity embodied in that Act by permitting—if not promoting—collateral attacks on state court class action judgments. *See Growe* v. *Emison*, 507 U.S. 25, 35 (1993) ("elementary principles of federalism and comity [are] embodied in the full faith and credit statute"); *Parsons Steel, Inc.* v. *First Alabama Bank*, 474 U.S. 518, 523 (1986) (acknowledging "important values of federalism and comity embodied in the Full Faith and Credit Act"). In the same vein, the decision undermines this Court's decision in *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 806-814 (1985), which expressly approved state court adjudication of nationwide class actions.

The importance of the second question presented also cannot be doubted. *Rooker-Feldman* limits the subject matter jurisdiction of the inferior federal courts in accordance with the constitutional plan. As the Fourth Circuit recently explained, "*Rooker-Feldman* is one of a number of doctrines that safeguards our dual system of government from federal judicial erosion." *Brown & Root, Inc.* v. *Breckenridge*, __ F.3d at __, 2000 WL 526068, at *3 (citing *Atlantic Coast Line R.R.*. v. *Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970)). *See also Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 586 (1999) ("[F]ederal and state courts are complementary systems for administering justice in our Nation. Cooperation and comity, not competition and conflict, are essential to the federal design."); Sherry, *supra*, at 1085 ("The problem of multiple lawsuits and complex

litigation is especially acute when it interacts with questions of judicial federalism."). The Fifth Circuit position on the availability of the *Rooker-Feldman* defense seriously erodes this important structural safeguard.

The plaintiffs in this complex federal litigation (or at least their proper representatives) brought suit against Mobil in state court, attained a valuable settlement that was carefully reviewed and approved by the state courts, and then turned to federal court to litigate a claim that was expressly released by the state court settlement judgment. Permitting such federal litigation to proceed strikes at the heart of the structural interests protected by *Rooker-Feldman* and, to put it simply, treats the state courts like second-class courts.

* * * *

In short, the decision below has grave consequences for class action litigation and will affect a wide variety of future cases implicating the preclusive effect of state court settlement judgments releasing exclusively federal claims. This Court should grant certiorari to further "clarify this important area of federal law." *Matsushita*, 516 U.S. at 373.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40840

In re LEASE OIL ANTITRUST LITIGATION (NO. II).

"ALL PLAINTIFFS,"
Plaintiff-Appellee,

v.

"ALL DEFENDANTS,"
Defendant-Appellant.

Decided: Jan. 11, 2000

Before HIGGINBOTHAM, BENAVIDES, and STEWART, *Circuit Judges*.

OPINION

HIGGINBOTHAM, *Circuit Judge*.

In this interlocutory appeal, we consider the preclusive effect of an Alabama state court judgment approving a settlement of a nationwide class action on a federal class action pending in a federal district court in Texas. Defendant Mobil Oil Corporation filed a motion to dismiss, claiming an Alabama state court settlement bars the federal suit against it. We affirm the district court's denial of Mobil's motion to dismiss. We also conclude that the district court did not violate Fed. R. Civ. P. 65 in issuing an injunction against Mobil.

I

This federal class action asserts claims against various crude oil purchasers under § 1 of the Sherman Act for underpayments on oil production leases. After this suit was filed, other plaintiffs filed a separate suit on behalf of a national class in a circuit court of Alabama entitled *Lovelace v. Amerada Hess Corporation*. The factual allegations in *Lovelace* and the federal suit were identical, but *Lovelace* asserted only state law claims. The *Lovelace* defendants removed the case to federal court, but the federal district court in Alabama granted the *Lovelace* plaintiffs' motion to remand to state court based on their representation that the case involved only state law claims. Mobil then settled the *Lovelace* claims for $15 million and prospective relief, and an Alabama trial court affirmed the settlement. Part of that settlement released Mobil from all existing federal claims of the nationwide class.

After settling the state suit in Alabama, Mobil moved to dismiss the federal case, now consolidated with five other federal class actions and retitled. Mobil argued that the Alabama settlement precluded the federal claims. While Mobil's motion to dismiss was pending, the Texas federal district court preliminarily enjoined the parties from settling federal claims in other cases without its approval. The injunction would bind Mobil, however, only if the pending motion to dismiss was denied. The court subsequently denied the motion, thereby including Mobil in the injunction. Mobil appeals the injunction under 28 U.S.C. § 1292(a)(1).

II

Mobil contends that it lacked notice and an opportunity to be heard before the injunction issued. We review that order for abuse of discretion. *See Affiliated Prof'l Home Health Care Agency v. Shalala*, 164 F.3d 282, 284 (5th Cir.1999).

Rule 65 of the Federal Rules of Civil Procedure allows the court to issue a preliminary injunction after actual notice and

an opportunity to be heard. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir.1996). The form of notice is a matter for the trial court's discretion. *Plaquemines Parish Sch. Bd. v. United States*, 415 F.2d 817, 824 (5th Cir.1969).

Here, when the district court enjoined the other defendants, the order advised Mobil that it too would be enjoined if the court denied its motion to dismiss. This was sufficient notice to Mobil. Mobil could have challenged the propriety of the injunction during the two months before the court denied its motion to dismiss. We find no violation of Rule 65.

III

Mobil also appeals the denial of its motion to dismiss. Mobil argues that the Full Faith and Credit Act, 28 U.S.C. § 1783, required the federal district court to give preclusive effect to the judgment of the state court of Alabama approving the settlement.[1]

We must first decide whether review of the denial of the motion to dismiss is before us as part of the appeal of the preliminary injunction.[2] Our jurisdiction under 28 U.S.C. § 1292(a)(1) is not limited to the specific order appealed from. *See Magnolia Marine Transp. Co., Inc. v. LaPlace Towing Corp.*, 964 F.2d 1571, 1580 (5th Cir.1992). Jurisdiction extends to certain related issues that have been

[1] Mobil also argues that the federal claim is barred under the Rooker-Feldman doctrine. Because this Circuit has interpreted that doctrine as consistent with the Full Faith and Credit Act, *see Davis v. Bayless*, 70 F.3d 367, 375 (5th Cir.1995), the two arguments are not distinct. Mobil's argument would bar the very analysis it relies on in this appeal: the *Matsushita* court's examination of whether a state court judgment claiming to release federal claims should be given preclusive effect.

[2] Mobil contends that the plaintiffs in one of the class actions have no standing to defend against Mobil's motion because they opted out of the *Lovelace* settlement. We agree with the district court that this argument is irrelevant. Other plaintiffs did not opt out, and our decision on the preclusion issue will be law of the case on further proceedings, regardless of whether the class actions ultimately proceed to trial separately.

sufficiently developed so as not to require further development at the trial court level. Wright, Miller & Cooper, *Federal Practice & Procedure*: *Jurisdiction* 2d § 3921.1 (1999).

The injunction and the preclusive effect of the Alabama judgment are so entangled as to arrive here together. Delaying review of whether Mobil has effectively settled the federal claim while deciding whether the federal court can enjoin Mobil from settling without its approval would make no practical sense, and we have jurisdiction to avoid that oddity. In short, it would waste judicial resources without any offsetting benefit in the form of a more fully developed record. We have jurisdiction, and it is appropriate to decide the preclusive effect of the Alabama judgment as part of the § 1292(a)(1) appeal.

The Full Faith and Credit Act requires a federal court to give state court judgments the same preclusive effect they would have in another court of the same state. *See Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523 (1986). In *Matsushita Electric Industrial Company*, the Supreme Court held that a federal court must give effect to a state court approval of a class action settlement, even if the settlement releases federal claims within the exclusive jurisdiction of the federal courts, as long as the law of the state would give preclusive effect to the judgment. *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 375, 380 (1996).

The issue in this case is thus whether Alabama courts would preclude the federal suit following a settlement that claimed to release federal antitrust claims. Mobil argues that Alabama law precludes the suit as a matter of contract and as a matter of res judicata. First, Mobil claims that Alabama would enforce the settlement as a matter of contract law. A footnote in *Matsushita* comments that if a state chooses to approach the preclusive effect of a judicially-approved settlement "as a question of pure contract law," the federal

court must follow that approach. *Matsushita*, 516 U.S. at 379 n.6.

We are not persuaded that Alabama treats the preclusive effect of judicially-approved settlements as a question of pure contract law. The cases and statute cited by Mobil stand for the ordinary proposition that a settlement will be enforced according to its terms, not that Alabama follows a particular approach to preclusion law. Mobil's reference to *Adams v. Robertson*, 676 So.2d 1265 (Ala.1995), is also not on point. The *Adams* settlement settled no federal claims, and the Alabama Supreme Court's opinion, which reviewed the settlement for fairness, decided no preclusion issues. The passage cited by Mobil, stating the power of a court to release claims over which it does not have jurisdiction, is drawn from general language found in the trial court's lengthy findings, which were appended to the Alabama Supreme Court's opinion. *Adams*, 676 So.2d at 1300. This case is not precedent for the proposition that Alabama embraces a pure contract law approach to preclusion.

Mobil's second preclusion argument is that res judicata bars the action. Alabama insists that for a prior judgment to control, it must have been rendered by a court of competent jurisdiction. *See Carlisle v. Phoenix City Bd. of Educ.*, 543 So.2d 194, 195 (Ala.1989). The jurisdictional competency requirement extends to judgments following settlements. *See Parmater v. Amcord, Inc.*, 699 So.2d 1238, 1240-41 (Ala.1997).

Alabama's law of res judicata is not unique. It is the test previously used by Delaware and described in *Matsushita*, where the state judgment would *not* have had preclusive effect on the federal suit: "[e]arly cases suggested that Delaware courts would not afford claim preclusive effect to a settlement releasing claims that could not have been presented in the trial court." *Matsushita*, 516 U.S. at 376. The result in *Matsushita* followed from the Delaware Supreme Court's elimination of the jurisdictional requirement in the

context of a settlement releasing federal claims. *Id.* at 376-77. We see no indication that Alabama has abandoned its jurisdictional requirement for judicially-approved settlements.

Because federal antitrust claims are within the exclusive jurisdiction of the federal courts, *see Marrese v. American Academy of Orthopaedic Surgeons*, 105 S.Ct. 1327, 1331 (1985), those claims could not have been litigated in the Alabama suit. Given current Alabama law requiring jurisdictional competency as a condition to the preclusive bite of res judicata, the Alabama judgment approving the settlement entered by its state court in *Lovelace* does not bar the federal action under that doctrine.

We hold that the district court met the requirements of Rule 65 in enjoining Mobil. We further hold that the Full Faith and Credit Act did not require the federal district court to give preclusive effect to the judgment of the state court of Alabama approving the *Lovelace* settlement.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

S.D. Texas

Corpus Christi Division

No. MDL 1206

In re LEASE OIL ANTITRUST LITIGATION (NO. II).

June 5, 1998

JACK, District Judge.

On this day came on to be considered Defendant Mobil Oil Corporation's ("Mobil") motion to dismiss various claims on full faith and credit grounds and for lack of subject matter jurisdiction in the above-styled action. After consideration of the briefs filed by several parties and the oral arguments presented on May 15, 1998, the Court DENIES said motion.

I. JURISDICTION

The Court has jurisdiction over the consolidated cases in this multidistrict litigation pursuant to the Judicial Panel on Multidistrict Litigation's transfer order of January 14, 1998, and 28 U.S.C. §§ 1331, 1332, 1367 and 1407.

II. FACTS AND PROCEEDINGS

In April 1996, plaintiff royalty payees filed a class action suit in the Southern District of Texas, *The McMahon Foundation et al. v. Amerada Hess Corp., et al.*, against 39 oil

companies, alleging that the companies, in violation of § 1 of the Sherman Act, conspired for over a decade to artificially depress oil production royalty payments owed to the putative class members. In that same month, a separate group of plaintiffs brought a class action suit in state court, *Cameron Parish School Board v. Texaco, Inc.*, against fifteen oil companies alleging violations of Louisiana law due to the underpayment of royalties owed for production of oil on properties in Louisiana. *Cameron Parish* was timely removed to federal court. In 1997, at least three other groups of plaintiffs brought separate suits in federal court based on similar royalty underpayment allegations and based on federal and/or state law violations (viz., *Randolph Energy, Inc. et al. v. Amerada Hess Corp. et al., Stanley v. Gulf Oil Corp. et al., Nicholson et al. v. Marathon Oil*).

In September 1996, a separate group of plaintiffs filed a putative class action in Alabama state court, *E.M. Lovelace et al. v. Amerada Hess Corporation et al.*, based on similar royalty underpayment allegations, asserting that 24 oil company defendants violated the separate antitrust statutes of each of the fifty states. *Lovelace* was removed to federal court, and the plaintiffs sought a remand, arguing that federal antitrust claims were not at issue in their case since their claims were based strictly on state statutes. Notably, federal antitrust claims may only be brought in federal court. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373 (1985); *Freeman v. Bee Mach. Co.*, 319 U.S. 448, 451 (1943); *General Investment Co. v. Lake Shore Ry.*, 260 U.S. 261 (1922).

In April 1997, the federal court remanded *Lovelace* since it appeared that neither diversity nor federal question jurisdiction existed. Shortly after the remand, the *Lovelace* plaintiffs agreed to a global settlement agreement with Mobil which released all claims against Mobil—both state and federal—of a nationwide class of royalty payees. In May 1997, Mobil and counsel for *Lovelace* plaintiffs announced the terms of

the settlement: in exchange for the nationwide class' release of all federal and state claims based on royalty underpayments, Mobil would pay $15 million to the class (with over 40% guaranteed to the attorneys), would change its method of determining royalty payments in the future, and would allow counsel for plaintiffs access to certain documents and Mobil employees.

The Alabama court ordered that the parties notify the potential settlement class members of the proposal and of a fairness hearing set for December 1997. The parties mailed actual notice to Mobil's royalty payees and published notice in national newspapers to alert all affected parties who were not Mobil payees. In December, the Alabama court held a hearing to certify a settlement class and to consider the fairness of the settlement. The named plaintiffs in *McMahon* did not appear to contest the certification or settlement, although they did exercise their right to opt out of the settlement. The named plaintiffs in *Stanley* neither appeared at the hearing nor opted out of the settlement. Represented by Lee Godfrey, intervenors from Texas state court litigation, *State of Texas et al. v. Amoco Production Co. et al.*, No. 95-8680 (345th Jud. Dist., Travis Cty, Tex.), concerning similar royalty underpayment allegations did appear and objected to both certification and settlement. After this hearing, the Alabama state court approved both a settlement class and Mobil's proposed global settlement.

Meanwhile, the Judicial Panel on Multidistrict Litigation ("JPML") was considering whether and where to consolidate the five similar federal actions which were pending and involved royalty underpayment allegations. In November 1997, counsel for plaintiffs and the defendants in *McMahon* (the first case brought on behalf of a nationwide class) filed a global settlement with the federal district court in Houston. Before the Houston court could consider the settlement, *McMahon* and the other federal cases were transferred to this Court pursuant to 28 U.S.C. § 1407 for coordinated and

consolidated proceedings as *In re Lease Oil Antitrust Litigation*, MDL-1206.

On May 14 and 15, 1998, this Court held the initial pretrial conference in MDL-1206. The *McMahon* plaintiffs and 24 oil companies (representing approximately 60-70% of the oil industry) expressed their desire to pursue the settlement agreement that they had proposed prior to consolidation, and those two factions formed, respectively, the "Settling Plaintiffs" and the "Settling Defendants." The remaining plaintiffs and defendants formed the "Non-settling Plaintiffs" and the "Non-settling Defendants" factions. The Court set a hearing to consider the settlement for the settling parties and a separate hearing to consider the class certification for the non-settling parties.

Mobil then presented its motion to dismiss. Plaintiffs in *Cameron Parish* and *Randolph* retracted their opposition to Mobil's motion, but Plaintiffs in *McMahon* and *Stanley* maintain their opposition to the dismissal of Mobil from MDL-1206. Mobil argues that its settlement in *Lovelace* ("Lovelace Settlement") has released all claims raised in MDL-1206 and therefore it must be dismissed. It bases its arguments on two legal theories: (1) under the Full Faith and Credit Act, this Court is required to give the Lovelace Settlement the same preclusive effect that an Alabama state court would give it; and, (2) under the Rooker-Feldman doctrine, this Court is divested of jurisdiction over the claims which the Lovelace Settlement released. Plaintiffs opposing Mobil's motion stress that the Alabama court which approved the Lovelace Settlement was unable to exercise jurisdiction over the released federal claims, and they argue that, therefore the Lovelace Settlement does not preclude litigation of those claims of exclusive federal jurisdiction. They also propose that the Rooker-Feldman doctrine is simply inapplicable to these circumstances. Thus, the fundamental issue before this Court is: When an Alabama state court approves a global class action settlement

which releases claims of exclusive federal jurisdiction, is a settling defendant protected—by either the Full Faith and Credit Act or the Rooker-Feldman doctrine—from the litigation in federal court of those purportedly released federal claims?

III. DISCUSSION

A. STANDING OF PLAINTIFFS TO OPPOSE MOBIL'S MOTION TO DISMISS

As a preliminary matter, Mobil contends that the Court must grant its motion to dismiss because the two named plaintiffs in *McMahon* opted out of the Lovelace Settlement and, consequently, lack standing. However, as Mobil has conceded, named plaintiffs in *Stanley* have not opted out of the Lovelace Settlement (Mobil's Supp. Mem. at 16; *Stanley* Plaintiff's Mem. at 1), and those plaintiffs oppose the motion to dismiss.

Since there are plaintiffs who did not opt out from the Lovelace Settlement and also oppose dismissal based on that settlement, it is proper for the Court to rule on Mobil's motion to dismiss at this point in the litigation. *See e.g.*, *Steinmetz v. Toyota Motor Credit Corp.*, 963 F.Supp. 1294 (E.D.N.Y.1997) (district court rules on defendant's motion to dismiss on full faith and credit grounds where putative class action plaintiff had not opted out of defendant's prior settlement). That is, since at the least the *Stanley* plaintiffs have standing to oppose the motion, the Court—in order to rule on Mobil's present motion—does not need to determine whether the *McMahon* plaintiffs have standing.

B. FULL FAITH AND CREDIT AND ALABAMA CLAIM PRECLUSION LAW

1. Approach Mandated by *Matsushita*

The Full Faith and Credit Act, 28 U.S.C. § 1738, mandates that the "judicial proceedings" of any state "shall have the

same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken."

The Supreme Court has recently emphasized that, "[A]bsent a partial repeal of the Full Faith and Credit Act, 28 U.S.C. § 1738, by another federal statute, a federal court must give the judgment the same effect that it would have in the courts of the State in which it was rendered." *Matsushita Elec. Indus. Co., Ltd. v. Epstein,* 516 U.S. 367, 116 S.Ct. 873, 876 (1996). "Federal courts may not employ their own rules in determining the effect of state judgments, but must accept the rule chosen by the state from which the judgment is taken." *Id.* 116 S.Ct. at 877 (citations omitted).

Matsushita specified that class actions constituted "judicial proceedings" for § 1738 purposes and that, at least "at the outset," § 1738 controls where the underlying judgment is the approval of a settlement. *Id.* 116 S.Ct. at 878. Most importantly, the Supreme Court decided that, in some circumstances, a state court settlement could have preclusive effects on claims which may be brought exclusively in federal courts. *Id.* Ultimately, the *Matsushita* court arrived at the following rule: " § 1738 is generally applicable in all cases in which the state court judgment at issue incorporates a class action settlement releasing claims solely within the jurisdiction of the federal courts." *Id.*

The *Matsushita* court also outlined a two-step approach for applying this general rule:

> When faced with a state court judgment relating to an exclusively federal claim, a federal court must first look to the law of the rendering State to ascertain the effect of the judgment. If the state law indicates that the particular claim or issue would be barred from the litigation in a court of that state, then the federal court must next decide whether, as an exception to § 1738, it should refuse to give preclusive effect to the state court judgment.

Id. (citations omitted). Thus, this Court's first task is to determine the effect of the Lovelace Settlement under Alabama law. That is, the Court must answer this strictly hypothetical question: if a plaintiff brought federal antitrust claims against Mobil in an Alabama state court,[1] would that Alabama court give the Lovelace Settlement claim preclusive effect over those claims of exclusive federal jurisdiction?

In *Matsushita* and *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327 (1985), the Supreme Court acknowledged that the inquiry into state law on this preclusion issue might not yield a direct answer: "Usually 'a state court will not have occasion to address the specific question whether a state judgement has issue or claim preclusive effect in a later action that can be brought only in federal court.' " *Matsushita*, 116 S.Ct. at 878 (quoting *Marrese*, 105 S.Ct. at 1332). Nevertheless, *Matsushita* counsels that "Where a judicially approved settlement is under consideration, a federal court may consequently find guidance from general state law on the preclusive force of settlement judgments." *Id.* at 878-89.

The Court will proceed by following as closely as possible the method outlined in *Matsushita* and by seeking answers in Alabama law and general state law to two questions: (1) Irrespective of whether the prior judgment is an adjudication or a settlement, what is Alabama's general rule of claim preclusion with respect to claims of exclusive federal jurisdiction? and, (2) Does Alabama apply this same general rule of claim preclusion when determining the scope of the preclusive effect of settlements, as well as of adjudications?

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[1] Of course, a plaintiff may not bring such a suit because federal antitrust claims may be brought only in federal court. *See e.g., Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327, 1331 (1985); *Freeman v. Bee Mach. Co.*, 319 U.S. 448, 451 (1943); *General Investment Co. v. Lake Shore Ry.*, 260 U.S. 261 (1922).

2. Alabama's General Rule of Claim Preclusion

The Court first considers what is Alabama's general rule of claim preclusion, irrespective of whether the prior judgment is an adjudication or a settlement. It is appropriate to consider this question first because, in order to answer the second question, it is necessary to understand the elements and nature of the general preclusion rule. That is, in order to recognize whether Alabama has adopted a distinct preclusion rule for settlements, it is necessary to first recognize the general rule from which any special "settlement rule" would be distinguishing itself.

a. *Marrese's* Survey of General State Preclusion Law

Before addressing Alabama preclusion law in particular, the Court should recognize that, in the antitrust context, the Supreme Court in *Marrese* has already described the general law of the states with respect to the preclusive force of state judgments over exclusive federal claims. First, citing the Restatement (Second) of Judgments, *Marrese* noted that "claim preclusion generally does not apply where '[t]he plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy because of the limitations on the subject matter jurisdiction of the courts . . .' " *Marrese,* 105 S.Ct. at 1333 (quoting Restatement, *supra*, § 26(l)(c)(1982)). This rule is generally known as the prior jurisdictional competency rule. *Marrese* continues: "If state preclusion law includes this requirement of prior jurisdictional competency, which is generally true, a state judgment will not have claim preclusive effect on a cause of action within the exclusive jurisdiction of the federal courts." *Id.* After *Marrese,* the Ninth Circuit and one district court have addressed the question of whether a prior state court judgment precludes subsequent federal antitrust suits, and they determined that both Illinois and California follow this general rule requiring prior jurisdictional competency. *Eichman v. Fotomat Corp.*, 759 F.2d 1434 (9th Cir.1985);

Marrese v. American Academy of Orthopaedic Surgeons, 628 F.Supp. 918 (N.D.Ill.1986) (on remand from Supreme Court).

Not only does the *Marrese* court recognize the predominance of the prior jurisdictional competency rule, it also explains that exceptions to this general rule should be construed narrowly: "Even in the event that a party asserting the affirmative defense of claim preclusion can show that state preclusion rules in some circumstances bar a claim outside the jurisdiction of the court that rendered the initial judgment, the federal court should first consider whether application of the state rules would bar the particular federal claim." *Id.* at 1333. That is, *Marrese* indicates the prior jurisdictional competency rule is the norm, and it instructs federal courts to avoid extending exceptions to that norm beyond the scope intended by state law.

For example, *Marrese* cast much doubt on the Fourth Circuit's holding in *Nash County Board of Education v. Biltmore Co.*, 640 F.2d 484 (4th Cir.), *cert. denied,* 454 U.S. 878 (1981). In *Nash*, the Fourth Circuit applied federal—rather than state—preclusion principles in order to support its conclusion that a state judgment approving settlement of state antitrust claims barred a subsequent federal antitrust claim. While explaining that the prior jurisdictional competency rule is the norm under state law, the *Marrese* court noted that the *Nash* court should have relied on state preclusion law—rather than federal principles—when deciding whether the federal claim was barred. *Marrese*, 105 S.Ct. at 1333, n.2. Then Marrese reiterated that it was "unwilling to create a special exception to § 1738 for federal antitrust claims that would give state court judgment greater preclusive effect than would the courts of the State rendering the judgment." *Id.* at 1334. *Marrese* stated: "To the extent that state preclusion law indicates that a judgment normally does not have claim preclusive effect as to matters that the court lacked jurisdiction to entertain, lower courts and commentators have

correctly concluded that a state court judgment does not bar a subsequent federal antitrust claim." *Id.* at 1333 (citations omitted).

In sum, *Marrese* is significant for at least four reasons to this Court's present inquiry. First, it reports that, as of 1985, the general rule in state law was that prior jurisdictional competency was required for a state court to render a judgment with preclusive effect. Second, in accordance with this general rule, the court suggests that state court judgements do not bar subsequent federal antitrust claims unless the state preclusion law indicates otherwise. Third, it emphasizes that any exception to this requirement of prior jurisdictional competency must be firmly grounded in general principles of the rendering state's law—and not simply based on federal principles of law. Fourth, it instructs federal courts not to assume that a particular exception to the prior jurisdictional competency rule implies the existence of a broad exception to the ordinary rule. *Id.* at 1333 (even where an exception to the prior jurisdictional competency rule exists in state law, "the federal court should first consider whether application of the state rules would bar the particular federal claim").

b. *Matsushita's* Approach to Delaware's Preclusion Law

In *Matsushita*, a class action securities suit, the Supreme Court determined that Delaware had abandoned the prior jurisdictional competency rule and would give preclusive effect to settlement judgments in subsequent federal suits. It is instructive to consider on what evidence of state preclusion law the Supreme Court relied when deciding that Delaware followed this exceptional rule.

The *Matsushita* court first noted that, as of 1967, Delaware apparently followed the general rule in the context of both adjudications and settlements—that is, it had required prior jurisdictional competency in all circumstances. *Id.* at 879. To support this observation, the court cited *Ezzes v. Acker-*

man, 234 A.2d 444, (Del.1967) which stated Delaware's claim preclusion rule as follows:

> [A] judgment entered either after trial on the merits or upon an approved settlement is *res judicata* and bars subsequent suit on the same claim . . . . [T]he defense of *res judicata* . . . is available if the pleadings framing the issues in the first action would have permitted the raising of the issue sought to be raised in the second action, and if the facts were known or could have been known to the plaintiff in the second action at the time of the first action. *Ezzes*, 234 A.2d at 445-46.

Matsushita, 116 S.Ct. at 879. The Supreme Court assumed that this language meant that Delaware required prior jurisdictional competency—for settlements as well as adjudications—at the time that *Ezzes* was decided. Next, the *Matsushita* court observed that a Delaware Court of Chancery had subsequently reported that " 'the *Ezzes* inquiry [was] modified in regard to class actions,' *In re Union Square Associates Securities Litigation*, C.A. No. 11028, 1993 WL 220528, *3 (June 16, 1993), by the Delaware Supreme Court's decision in *Nottingham Partners v. Dana*, 564 A.2d 1089 (Del.1989)." *Id.*

In *Nottingham*, the Delaware Supreme Court approved a class action settlement which released securities claims then pending in federal court. Like the *Union Square* court before it, the Supreme Court opined that *Nottingham* "appears to have eliminated the *Ezzes* requirement that the claims could have been raised in the suit that produced the settlement, at least with respect to class actions." *Matsushita*, 116 S.Ct. at 879. It cited the following language from *Nottingham* as indicating the adoption of a new rule: "In order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class

action even though the claim was not presented and *might not have been presentable* in the class action." *Id.* (quoting 564 A.2d at 1106) (emphasis added). Thus, the *Matsushita* court had case law with a holding that supported the view that Delaware had abandoned the prior jurisdictional competency requirement; notably, *Matsushita*—in accordance with the guidance of *Marrese*—cabined *Nottingham* to its explicit holding by reiterating that Delaware's new rule appeared to apply only in the class action context. *Id.*

c. Alabama's Preclusion Law and its Rule of Prior Jurisdictional Competency

The benchmark Alabama case reciting the elements necessary for a finding of claim preclusion is *Wheeler v. First Alabama Bank of Birmingham,* 364 So.2d 1190, 1199 (Ala.1978):

> The elements of *res judicata* are as follows: (1) prior judgment rendered by court of competent jurisdiction; (2) prior judgment on the merits; (3) parties to both suits substantially identical; and (4) same cause of action present in both suits. If these elements are present, then the former judgment is an absolute bar to any subsequent suit on the same cause of action, including any issue which was or could have been litigated in the prior action.

The key language here—which has been repeated consistently by the Alabama Supreme Court through 1997[2]—is the limitation of preclusive effect to those claims which "could have been litigated in the prior action." *Id.* To begin, an ordinary reading of that phrase would indicate that the Alabama Supreme Court requires prior jurisdictional com-

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[2] *Leverette ex rel. Gilmore v. Leverette*, 479 So.2d 1229, 1235-36 (Ala.1985); *Sanders v. First Bank of Grove Hill, et al.*, 564 So.2d 869, 872 (Ala.1990); *McCorkle v. McElwey*, 576 So.2d 202, 205 (Ala.1991); *Parmater v. Amcord Inc.*, 699 So.2d 1238, 1240-41 (Ala.1997). The Eleventh Circuit has also recently repeated the key phrase. *Mitchell v. Humana Hospital-Shoals*, 942 F.2d 1581, 1583 (11th Cir.1991).

petency even more firmly than did the Delaware court under *Ezzes*. *Compare*, *Ezzes*, 234 A.2d at 445-46 ("if the pleadings in the first action would have permitted the raising of the issue sought to be raised in the second action . . .). Thus, in light of the Supreme Court's reading of *Ezzes*, it appears reasonable to assume that Alabama follows the prior jurisdictional competency rule.

This reading is fortified by the fact that, as explained above, *Marrese* has determined that the states generally follow the rule of prior jurisdictional competency. *Marrese*, 105 S.Ct. at 1333. Moreover, *Marrese* specifically indicated that this general rule appeared to be applicable to antitrust actions, and it approvingly cited the Restatement (Second) of Judgements several times on this issue. *Id.*[3] The immediate question for this Court is whether this general rule, as explained by *Marrese* and the Restatement, holds true in Alabama law for judgments in general.[4]

While Alabama courts have not cited to § 26 of the Restatement of Judgments in particular, they have frequently relied on portions of the Restatement concerning other aspects of preclusion law. For instance, Alabama courts have cited the Restatement's "transactional test," *Selma Foundry & Supply Co. v. Peoples Bank & Trust Co.*, 598 So.2d 944, 848 (Ala.1992), its rule against piecemeal litigation, *Century 21 Preferred Properties Inc. v. Alabama Real Estate Commission*, 401 So.2d 764, 768 (Ala.1981); its rule for determination of the preclusive effect of a quasi-judicial body's decision, *Carden v. Personnel Bd.*, 474 So.2d 1155, 1156

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[3] In particular, *Marrese* favorably refers to the Restatements § 26(1)(c), Illustration 2: "A Co. brings an action against B Co. in a state court under a state antitrust law and loses on the merits. It then commences an action in a federal court upon the same facts, charging violations of the federal antitrust laws, of which the federal courts have exclusive jurisdiction. The second action is not barred."

[4] In Section III.3, *infra*, the Court considers whether this rule applies in the context of settlements, as well as adjudications.

(Ala.Civ.App.1985); its rules of terminology, *Ayers v. State*, 659 So.2d 177, 181 (Ala.Crim.App.1994); its explanation of the effect of the merger of law and equity on preclusion issues, *Lesley v. City of Montgomery*, 485 So.2d 1088, 1091 (Ala.1986); and its explanation of the dropping of the mutuality requirement, *Jones v. Blanton*, 644 So.2d 882, 886 (Ala.1994).

Most significantly, the Alabama Supreme Court relied on the Restatement in *Terrell v. City of Bessemer*, 406 So.2d 337 (Ala.1981) to fill a gap in Alabama preclusion law concerning an issue which is akin to the instant issue. In *Terrell,* the plaintiff filed § 1983 and common law tort claims in federal court, but that court declined to exercise supplementary jurisdiction over the tort claims even though they arose from the same incident. While the federal claims were still pending, the plaintiff filed his tort claims in state court. The state court defendant moved for dismissal based on the fact that Alabama law prohibits the splitting of actions against the same party. In discussing the propriety of exercising jurisdiction, the Alabama court looked to preclusion law and the Restatement of Judgments for guidance. And, in deciding that the plaintiff could bring the state court action where his claims could not be heard in federal court, the Alabama Supreme Court explicitly adopted the following rule from the Restatement:

> A given claim may find support in theories or grounds arising from both state and federal law. When the plaintiff brings an action on the claim in a court, either state or federal, in which there is no jurisdictional obstacle to his advancing both theories or grounds, but he presents only one of them, and judgment is entered with respect to it, he may not maintain a second action in which he tenders the other theory or ground. If however, the court in the first action would clearly not have had jurisdiction to entertain the omitted theory or ground (or, having jurisdiction, would clearly have declined to exercise it as a mat-

> ter of discretion), then a second action in a competent court presenting the omitted theory or ground should not be held precluded. Restatement (Second) of Judgments, Explanatory Notes § 61.1, comment e at 160 (Tent. Draft No. 5, 1978).

Id. at 339-40. While this section of the Restatement pertains to a plaintiff's ability to bring concurrent actions, the fact that the Alabama court adopted it signifies two things: (1) it reaffirms that the Alabama Supreme Court sometimes looks to the Restatement for guidance in filling gaps in its own law of judgments; and, (2) it indicates that Alabama law supports a policy against allowing a court which does not exercise jurisdiction over claims (i.e., the federal court in *Terrell*) to issue decisions which have binding legal effect on claims outside of its jurisdiction (i.e., *Terrell's* state law claims). In short, *Terrell* confirms that it is reasonable to assume that Alabama has not decided to eschew the Restatement's rule—and the "general[ ]" rule, *Marrese*, 105 S.Ct. at 1333—which requires prior jurisdictional competency for a judgment to have preclusive effect.

An Eleventh Circuit interpretation of Alabama preclusion law also bolsters this Court's determination that Alabama follows the prior jurisdictional competency rule. In *Carlisle v. Phoenix City Bd. of Educ.*, 849 F.2d 1376 (11 Cir.1988), the court decided that, where an Alabama state court did not have the authority to hear a federal claim, that Alabama court's judgment of a similar state law claim did not preclude the subsequent litigation in federal court of the federal claim.

Carlisle, a principal, was transferred by his school board. He appealed the board's decision to the Alabama State Tenure Commission, which overturned the board. The board then appealed to the county circuit court which reversed the Commission. The state court of appeals affirmed the county court. Subsequently, the EEOC issued the principal a right to sue letter for race discrimination, and the principal brought

his Title VII action in federal court. The federal district court properly determined that a state court's review of the Commission's decision had claim preclusive effect in general, but it also decided that the state court's review of the Commission's decision precluded the Title VII suit. On appeal, the Eleventh Circuit first determined that the Commission could not have heard the race discrimination claim because it was not within its mandate. *Id.* at 1381. The *Carlisle* court, citing the usual Alabama preclusion rule that " '*res judicata* extends . . . to any issue that could have been litigated' " *Id.* (quoting *McGruder v. B & L Constr. Co.*, 331 So.2d 257 (Ala.1976))—then concluded that the state court's decision would not have preclusive effect on the racial discrimination claim since the plaintiff could not have raised the federal claim before the Commission. *Id.* at 1382.

Although the Eleventh Circuit does not explicitly explain how it reaches this conclusion, it appears the court must have acted on the premise that, in Alabama, claim preclusion applies *only* to those claims which the first court could have heard. In other words, it assumes the rule of interpretation *expressio unius est exclusio alterius* applies to Alabama's claim preclusion doctrine when it states that "the former judgment is an absolute bar to any subsequent suit on the same cause of action, including any issue *which was or could have been* litigated in the prior action." *Wheeler*, 364 So.2d at 1199.[5] This application in *Carlisle* simply confirms what the Court has determined by an ordinary reading of the Alabama rule in the context of general state preclusion law and the Restatement: that Alabama law requires prior jurisdictional competency for judgments in general to have preclusive effect.

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[5] The Alabama Supreme Court approvingly cited *Carlisle* in *Smith v. Alabama Aviation and Technical College*, 683 So.2d 426 (Ala.1995) for other propositions of law.

In sum, it appears that Alabama follows the prior jurisdictional competency rule. First, an ordinary reading of Alabama's preclusion rule supports this finding, and both the Supreme Court's interpretation of similar language in *Ezzes* and the Eleventh Circuit's holding in *Carlisle* confirm this ordinary reading. Second, as the Supreme Court explained, the general rule in the states is that of prior jurisdictional competency. The Restatement of Judgments adopts this rule, and the Alabama Supreme Court has frequently relied on the Restatement when applying its own preclusion law. Accordingly, the Court FINDS that Alabama law requires that its court have prior jurisdictional competency in order for its judgments—in general—to have preclusive effect on subsequent claims.

3. Has Alabama Adopted a Special Claim Preclusion Rule with respect to Settlement Judgments?

Mobil's strongest argument is that Alabama, like Delaware, has discarded the prior jurisdictional competency rule in the context of class action settlements. On this issue, the evidence in Alabama law is slight, but, in light of *Matsushita* and *Marrese,* it cannot be said that Alabama has adopted Delaware's rule.

a. Alabama Courts' Traditional Application of the Prior Jurisdictional Competency Rule in the Settlement Context

In *Matsushita,* the Supreme Court determined that the original rule in Delaware was prior jurisdictional competency and that this rule applied in both the context of a "judgment entered either after trial on the merits or upon an approved settlement." 116 S.Ct. at 879 (quoting *Ezzes*, 234 A.2d at 445). However, the Supreme Court—in consonance with a lower Delaware court—observed that in 1989, the *Nottingham* court had distinguished between settlement judgments and adjudications when it held that a settlement could have

the effect of releasing claims beyond the court's jurisdictional capacity.

At least until 1996, there was not a single indication in Alabama caselaw that Alabama distinguished between settlements and adjudications when applying its claim preclusion law. For example, it stated the same critical language (i.e., that preclusion extends to any "issue which was or could have been litigated in the prior action" *Wheeler*, 364 So.2d at 1199) in several cases involving court-approved settlements. *See e.g. Educators' Investment Corporation of Alabama, Inc. v. Autrey*, 383 So.2d 536, 538 (Ala.1980) (class action settlement); *Parmater v. Amcord, Inc.*, 699 So.2d 1238, 1240-41 (Ala.1997) (settlement); *Lott v. Toomey*, 477 So.2d 316, 319 (Ala.1985) (consent decree).

In particular, in *Autrey*, 383 So.2d 536, a corporation brought suit in Alabama state court seeking payment from a shareholder on a promissory note. However, the defendant asserted that the claim was precluded by a settlement that the class of shareholders recently had entered into with the plaintiff corporation. In applying the *Wheeler* criteria, the state court held that the claims were precluded "because the issue of the corporation's remedies for indebtedness was before the trial court in the prior suit between the same parties and because the specific question of exclusivity at least could have been determined." *Id.* at 539. The *Autrey* court's holding even suggests that, if it had been impossible to raise the question of exclusivity in the previous action, the present claims would not be precluded by the settlement.

In 1997, the Alabama Supreme Court again stated its usual claim preclusion rule—that is, the prior jurisdictional competency rule—in a case where it evaluated the preclusive effect of a settlement judgment. In *Parmater*, 699 So.2d 1238, the Court decided whether the settlement of a wrongful death action in Iowa precluded, under the claim preclusion doctrine, a subsequent wrongful death action in Alabama

based on a cause of action arising from the same nucleus of operative fact. In that case, an Iowa family was killed when their private airplane crashed. The court-appointed representatives of the family's estate sued Amcord in Iowa state court, and subsequently the parties entered a settlement which released all claims against Amcord. Meanwhile, a relative of the family gained appointment as a "special administrator for the limited purpose of pursuing claims under the laws of Alabama." This relative then sued Amcord in Alabama court, and Amcord asserted that the Iowa settlement precluded the Alabama suit.

In discussing Alabama claim preclusion law, the *Parmater* court repeated the prior jurisdictional competency rule, precisely as it is stated in *Wheeler* in the context of an adjudication. *Id.* at 1240-41. The *Parmater* court commented that Iowa preclusion law was consistent with Alabama law and stated that Iowa's preclusion rule holds that " '[a] prior adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination.' " *Id.* at 1241 (citing *Leuchtenmacher v. Farm Bureau Mutual Ins. Co.*, 460 N.W.2d 858, 860 (Iowa 1990)). The Alabama court then held that the claims were identical in the two suits and the Iowa settlement precluded the Alabama suit.

In two ways, *Parmater* illustrates that the Alabama Supreme Court does not recognize any distinction between settlements and adjudications when considering claim preclusive effect. First, where its holding determined the preclusive effect of a settlement rather than an adjudication, the court simply repeats the *Wheeler* language concerning prior jurisdictional competency. Second, although the case concerns a settlement, the court cites a statement of Iowa preclusion law which—as stated—appears to apply only to "adjudication[s]." *Id.* Thus, the *Parmater* court collapses any distinction between the settlements and adjudications. The possibility that there could be a distinct rule in Iowa or

Alabama law for the preclusive effect of settlements, in contrast to adjudications, does not seem to be even a remote consideration to the *Parmater* court.

b. Mobil's Misplaced Reliance on *Adams*

Mobil essentially argues that Alabama does not follow the prior jurisdictional competency rule in the circumstances of a class action settlement. In doing so, Mobil depends almost exclusively on a single sentence found appended to a recent Alabama Supreme Court decision, *Adams v. Robertson*, 676 So.2d 1265 (Ala.1995), *cert. dismissed as improvidently granted*, 520 U.S. 83 (1997). As explained below, Mobil's reliance is misplaced.

In that case, Adams sued an insurance company on behalf of a nationwide class, alleging a fraudulent scheme to get the plaintiffs to choose to switch to less-comprehensive coverage. After Adams sued, two other plaintiffs filed their own suits, but these suits were stayed so Adams' case could be handled without interference. The trial court approved the class and the settlement without allowing objectors to opt-out of the class. The court refused their opt-out because it had certified the class pursuant to Rule 23(b)(1) and 23(b)(2) rather than 23(b)(3).[6] In *Adams*, the objectors argued that, since a few plaintiffs in the class were entitled to money damages rather than injunctive relief, the class should have been certified under Rule 23(b)(3) and, consequently, they should have been allowed to opt out. They also argued that the settlement was inadequate compensation.

The significance of *Adams* for the instant case is that the settlement released all claims related to the disputed insurance program and which were based on allegations of fraud, misrepresentation, concealment, failure to disclose or other tortious conduct in breach of duty. At one point in its

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[6] Alabama rules of procedure read the same as the Federal Rules.

discussion of the adequacy of the settlement, the trial court stated as follows:

> The Court concludes that a class action settlement may release not only the claims alleged in the complaint and before the Court, but also claims which could have been alleged by reason of, or in connection with, any matter or scheme or facts set forth or referred to in the complaint. Even where a court does not have the power to adjudicate a claim, it may still approve release of that claim as a condition of the settlement of an action before it. *See e.g., In re Corrugated Container Antitrust Litigation,* 643 F.2d 195, 221 (5th Cir.1981); *Nottingham Partners v. TransLux Corp.*, 925 F.2d 29 (lst Cir.1991); *Huguley v. General Motors Corp.*, 999 F.2d 142, 145 (6th Cir.1993); *Grimes v. Vitalink*, 17 F.3d 1553, 1994 WL 70482 (3d Cir. March 9, 1994).

Id. at 1300. The first sentence simply repeats the general Alabama preclusion rule, while the second appears to expand that rule beyond its ordinary scope, at least in the context of settlements. There are basically two types of reasons why this phrase should not be relied on as evidence that Alabama has renounced the prior jurisdictional competency rule in the context of class settlements: first, the trial court's use of this phrase is dictum and not necessarily grounded in caselaw; second, the Alabama Supreme Court has not authoritatively adopted the trial court's exceptional statement of the law.

To begin, the *Adams* settlement could not possibly release any claims of exclusive federal jurisdiction (i.e., antitrust, securities, patent), and therefore the trial court's "conclusion of law" appears to be surplusage. At best, the trial court included this phrase in order to bolster its immediately preceding conclusion that the settlement could properly release claims that could not have been raised in the underlying litigation due simply to the fact that, as a practical matter, many unnamed class plaintiffs did not receive notice

of the settlement. *See* 676 So.2d at 1300 (conclusions of law 12 and 13). This certainly is not the use to which Mobil aims to put the *Adams* phrase. Since the phrase is dictum, its value in this inquiry is limited.

Moreover, the trial court seems to be stating a rule of preclusion based on principles of federal law, rather than Alabama law, since it cites only federal courts for its proposed rule. It is possible that the trial court, like the Fourth Circuit in *Nash*, believed that federal preclusion principles determined the preclusive effects of a global settlement, but *Matsushita* has clearly disabused all of that notion. 116 S.Ct. at 878. Mobil even suggests that it was proper for the trial court to cite federal cases on this issue since it was determining the fairness of a class action settlement under Rule 23(e) (Mobil's Supp. Mem at 4-5). While Alabama may consider federal construction of Rule 23(e) as persuasive authority, *First Ala. Bank of Montgomery, N.A. v. Martin*, 381 So.2d 32, 33-34 (Ala.1980), *cert. denied*, 461 U.S. 938 (1983), the trial court purportedly was stating the preclusive effect of a settlement—not explaining whether the settlement was fair. As explained above, the question of claim preclusion is strictly a question of state law, and thus both Mobil and the trial court may have gone astray insofar as they may have believed that the preclusion rule stated in *Adams* could properly be grounded in federal preclusion principles.

Further, two of the four cases on which the trial court relies do not even support the rule that Mobil wants this Court to read into the phrase. For example, the Fifth Circuit case, *In re Corrugated Container*, held that a federal court could release state claims even though they were not pending in federal court, and therefore *Corrugated Container* says nothing about the release of claims over which a court is prohibited from exercising jurisdiction. In fact, the Fifth Circuit explicitly refrained from ruling on whether "a federal court may be jurisdictionally barred in some circumstances from releasing state claims not before it." 643 F.2d at 221,

n.39. While two of the cases cited by the trial court (i.e., *Nottingham* and *Grimes*) do recite the same rule stated by the Alabama trial court, those statements of the law are both based on Delaware law and the doctrine it adopted in 1989, as explained above in the discussion of *Matsushita*, where the Supreme Court determined that the Delaware rule was a departure from its former rule of prior jurisdictional competency.

The trial court's statement of the law in itself is simply poor support for Mobil. Since the Alabama trial court did not need to decide if exclusive federal claims could be released, its statement to that effect was dictum. Moreover, that dictum carries a questionable pedigree because it apparently was extrapolated from either Delaware law or apocryphal federal principles preclusion law (which the Supreme Court says do not govern the issue).

Second, the Alabama Supreme Court's treatment of the trial court's dictum does not support Mobil's position. The court's two principal holdings do not relate to the issue of the scope of the settlement's release. First, the Alabama Supreme Court agreed with the trial court that the denial of the right to opt-out in this case did not violate the objectors' Due Process rights. Second, it also confirmed that the settlement was "fair, adequate and reasonable." *Id.* at 1273. While this second holding does relate peripherally to the issue of the settlement's scope, the Alabama Supreme Court discussed the adequacy of the settlement for less than one page, addressed only one aspect of adequacy in detail (the percentage of objectors to the settlement), and simply stated that it had "thoroughly review[ed]" the trial court's findings of fact and conclusions of law. *Id.* at 1272-73. The court then stated that it was "attach[ing] those findings and the final order as an appendix to this opinion." *Id.* at 1273.

Rather than simply stating that it would adopt the trial court's order, the *Adams* court stated that it was attaching the

decision as an appendix. Presumably, it attached "the findings and the final order," *id.*, in order that readers of the Supreme Court's opinion could know what findings of fact reflected an adequate settlement, rather than for the purpose of adopting any novel interpretations of Alabama preclusion law. The issue of the scope of the settlement was never explicitly addressed by the Alabama Supreme Court, and it certainly made no ruling in that regard.

Finally, after issuing *Adams,* the Alabama Supreme Court has reiterated its preclusion law in precisely the same language that it always used prior to *Adams*, without making any comment concerning the sea-change in preclusion law that *Adams* purportedly represents. *See Parmater*, 699 So.2d at 1240-41. The Court has already summarized the significance of *Parmater:* it indicates that the Alabama Supreme Court has not recognized any distinction between claim preclusion law for settlements as opposed to adjudications.[7] In contrast to the instant case and Alabama caselaw, in *Matsushita*, the Supreme Court determined that Delaware had abandoned the prior jurisdictional competency rule only after it found that *Nottingham* clearly indicated such an abandonment and only after noting that a Delaware Court of Chancery had likewise recognized this distinct departure from *Ezzes*. Considering that the trial court's phrase was merely dicta and that the Alabama Supreme Court has not adopted that phrase or a distinction between settlements and adjudications with respect to their preclusive effect, it is

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[7] *Parmater* could be distinguished from *Adams* based on the fact that the latter concerns a class action while the former does not. However, the language in *Adams* appears to cover all settlements, without making any such distinction. Therefore, if the Alabama Supreme Court actually had adopted a new settlement rule (like the Delaware rule) in 1996, it would have been necessary for the *Parmater* court to make this distinction between class action and ordinary settlements before it simply reiterated the prior jurisdictional competency rule in the context of an ordinary settlement. Thus, the fact that *Parmater* did not make any such distinction implies that *Adams* did not adopt a novel preclusion rule in Alabama.

evident that Alabama has maintained the general rule of prior jurisdictional competency, even in the context of class action settlements.

In sum, this Court is required to make the same inquiry that the *Matsushita* court made: in particular, the Court is bound to determine the significance of the recurrent language in Alabama case law which states that a judgment's preclusive effect will extend to "any claim that was adjudicated or could have been adjudicated in the prior action." Clearly, Alabama's general claim preclusion rule is prior jurisdictional competency. And, the Alabama Supreme Court regularly applies that test in the settlement context. Although one trial court has suggested in dicta that there is a distinction between settlement judgments and adjudications for preclusion purposes, the Alabama Supreme Court appears not to have recognized any such distinction. Thus, this Court finds the traditional holdings of the Alabama Supreme Court to be a more reliable basis for this ruling than the language in *Adams*. That is, *Adams* does not represent an adoption of a new preclusion rule, the way that *Nottingham* and subsequent cases did in Delaware.

For the forgoing reasons, the Court FINDS that the Lovelace Settlement does not have preclusive effect on subsequent actions brought under federal antitrust law. Since Alabama law does not bar the federal antitrust claims raised in the instant litigation, it is not necessary to determine if an exception to § 1738 should apply, *Marrese*, 105 S.Ct. at 1335; in particular, this means that the Court need not address Plaintiffs' arguments that they were deprived due process by the Alabama court's approval of the Lovelace Settlement.

C. ROOKER-FELDMAN DOCTRINE

The Rooker-Feldman doctrine holds that federal courts lack jurisdiction to entertain collateral attacks on state court judgments. *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317

(5th Cir.), *cert. denied*, 513 U.S. 906 (1994); *see*, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Under this doctrine, federal district courts, as courts of original jurisdiction, lack jurisdiction to review, modify, or nullify final orders of state courts. *Id.* (citing *Kimball v. Florida Bar*, 632 F.2d 1283, 1284 (5th Cir.1980)).

There are two requirements for application of the Rooker-Feldman doctrine: First, the plaintiff must have been a party to a final judgment in state court judicial proceedings, *Johnson v. De Grandy*, 512 U.S. 997, 114 S.Ct. 2647, 2654 (1994); *Johnson v. Odom*, 901 F.Supp. 220, 223 (W.D.La.1995). Second, the plaintiff's federal complaint must seek "what in substance would be an appellate review of the state judgment(s) in a United States District Court." *Id.* (quoting *Johnson,* 114 S.Ct. at 2654). In other words, even if the plaintiff does not expressly seek review of state court judgments, the Rooker-Feldman doctrine applies if the federal court is confronted with issues that are "inextricably intertwined" with a state court judgment and the court is in essence being called upon to review the state court decision. *Davis v. Bayless*, 70 F.3d 367, 375 (5th Cir.1995); *United States v. Shepherd*, 23 F.3d 923, 924 (5th Cir.1994); *see also Odom,* 901 F.Supp. at 223.

In separate motions, Mobil has suggested that Rooker-Feldman bars the Court from reviewing two distinct decisions made by the *Lovelace* court: (1) its decision to certify the class and approve the settlement (Mobil's Memorandum at 23-25), and (2) its decision that it had jurisdiction to approve the settlement which included the release of exclusive federal claims (Mobil's Reply Mem. at 15, n.14.)

For the purposes of ruling on Mobil's Full Faith and Credit arguments, this Court has assumed. the validity of all decisions made by the *Lovelace* court. That is, the Court bases its denial of Mobil's Full Faith and Credit motion strictly on

the determination that Alabama preclusion law would not afford the Lovelace Settlement preclusive effect with respect to the federal antitrust claims which it purports to release. Since the Court has assumed the validity of all aspects of the *Lovelace* decision, Mobil's Rooker-Feldman arguments are groundless.

Mobil's first contention is clearly rendered moot because the Court has based this decision solely on the determination that Alabama law would not grant claim preclusive effect to the Lovelace Settlement over federal antitrust claims. In doing so, this Court has not even obliquely addressed the issues pertaining to the class certification and the adequacy of the settlement. Therefore, the Court simply has not reviewed any such judgment made by the *Lovelace* court.

Mobil's second contention depends on a misconstrual of the significance of the *Lovelace* court's statements that it had "jurisdiction over Mobil, the Class, and the subject matter of the Class Action" in its Final Judgment Dismissing Claims Against Mobil with Prejudice of December 12, 1997 (Para. 1), and that it "had jurisdiction over the settling parties in this action and the subject matter of this action" in its Conclusions of Law signed the same date (Para. 1). This Court must not—and does not—challenge the *Lovelace* court's determination that it had subject matter jurisdiction over the claims before it. *See e.g., Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Assoc.*, 455 U.S. 691, 706 (1982). Not even the objectors in the *Lovelace* litigation contested that the Alabama court lacked jurisdiction over the subject matter before it. (Mobil's Memorandum at 16). It is settled that the *Lovelace* court had jurisdiction over the claims before it.

However, it is critical to recognize that the only claims before the *Lovelace* court were state law claims—not the federal antitrust claims. And, as shown by *Matsushita*, the simple fact that the state court has subject matter jurisdiction

over certain state law claims is not dispositive proof that any settlement which the state court approves will have preclusive effect over exclusively federal claims in subsequent litigation. As the Supreme Court has clarified, the two issues of subject matter jurisdiction over state law claims and of claim preclusive effect on exclusively federal claims are separate: in *Matsushita*, there was no question that the Delaware court had subject matter jurisdiction over the state claims,[8] yet it remained necessary for the federal court to determine the separate question under state law of the preclusive effect of the settlement which the state court—with jurisdiction over the claims before it—had approved.

Thus, the error in Mobil's position is to assume that this Court, when determining the preclusive effect of the Lovelace Settlement under Alabama law, must also be reviewing the *Lovelace* court's decision that it had subject matter jurisdiction over state law claims. As just explained, these are two distinct issues. Notably, the parties and objectors in *Lovelace* did not argue the issue of the Lovelace Settlement's preclusive effect, and the *Lovelace* court, of course, did not enter any order with respect to the settlement's preclusive effect. Thus, this Court's decision grounded in preclusion law does not represent a review of the *Lovelace* court's determination that it had subject matter jurisdiction. Rather, the Court has made the kind of determination of preclusive effect that an Alabama court would be allowed to make. When a federal court takes action which would be allowed in a state court of the rendering state, Rooker-Feldman is inapplicable. *Davis*, 70 F.3d at 376 (citing *Gauthier v. Continental Diving Services, Inc.*, 831 F.2d 559, 561 (5th Cir.1987)).

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[8] The Supreme Court explicitly rejected the Ninth Circuit's view that the Delaware court's lack of jurisdiction over federal securities claims categorically denied preclusive effect to its judgment approving the settlement of federal securities claims. 116 S.Ct. at 884.

In sum, this Court's determination of the Lovelace Settlement's preclusive effect does not constitute a review of any aspect of the *Lovelace* court's decision to approve that settlement. Nor does the Court's decision represent a review of any issue "inextricably intertwined" with that decision by the Alabama court. Accordingly, the Court FINDS that the Rooker-Feldman doctrine does not apply in these circumstances.

D. CERTIFIED QUESTION FOR APPEAL

At the May 15 hearing, the Court discussed with the parties the possibility of certifying the question of Alabama claim preclusion law to the Alabama Supreme Court. However, the Court has determined that this route would seriously disrupt the management of this complex litigation. It is not certain that the Alabama Supreme Court would exercise its discretion to accept a certified question, *see* Ala. Const., amend. 328 § 6.02(b), and the parties report that the process takes 10 to 18 months. Further, the parties agree that such a delay would be too disruptive in this case since the validity of Mobil's settlement should be determined before the remaining defendants enter into any kind of settlement. Accordingly, the Court has decided not to certify the question to the Alabama Supreme Court.

Nevertheless, the Court will certify the question for immediate appeal pursuant to 28 U.S.C. § 1292(b). Section 1292(b) provides in pertinent part: "When a district judge, in making in a civil action an order not otherwise appealable under this section [that disallows interlocutory appeals with certain exceptions], shall be of the opinion that such order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, [s]he shall so state in writing in such order."

Since the Court FINDS that there is substantial ground for difference of opinion as the preclusion issues decided in this Order, the Court CERTIFIES Order No. 20 for immediate appeal under § 1292(b).

E. DISCOVERY WITH RESPECT TO MOBIL PENDING APPEAL OF THIS ORDER

Pursuant to the Lovelace Settlement, Mobil produced many documents which substantially satisfy the discovery needs of the putative nationwide class in MDL-1206. In accordance with the Court's Order No. 18 and the discussions at the conference of May 15, 1998, these Mobil documents must now be part of the document depository in MDL-1206. With the understanding that those Mobil documents are already part of the depository, the Court STAYS discovery against Mobil by the putative classes and the named plaintiffs who did not opt-out of the Lovelace Settlement, pending Mobil's appeal to the Fifth Circuit.

Of course, the *McMahon* plaintiffs did opt-out of the Lovelace Settlement, and therefore Mobil's appeal of Order No. 21 on the full faith and credit issue will not have any impact on their individual claims. While the *McMahon* plaintiffs are stayed from discovery on class certification issues and on issues which pertain to its putative class, the Court allows the *McMahon* named plaintiffs to proceed with discovery against Mobil on issues relevant to their individual claims.

F. EXTENSION OF COURT'S ORDER NO. 2 TO MOBIL

In April 1998, this Court entered Order No. 2, a temporary injunction against named Plaintiffs and Defendants in MDL-1206 which prevents them from entering—collectively or separately—into any settlement agreement which releases or purports to release the federal antitrust claims brought in this litigation, without first notifying this Court of the settlement

agreement and without first obtaining the Court's approval of said agreement. The Court explicitly excluded Mobil from Order No. 2, pending the resolution of Mobil's motion to dismiss (See Order No. 2 at 2, n.2). Since the Court has denied Mobil's motion to dismiss, it now EXTENDS Order No. 2 to Mobil.

IV. CONCLUSION

For the foregoing reasons, the Court FINDS that the Lovelace Settlement does not have preclusion effect with respect to the federal antitrust claims which it purports to release. Consequently, the Court also FINDS that the Plaintiffs in MDL-1206 may bring their federal antitrust claims against Mobil. The Court DENIES Mobil's Motion to Dismiss and CERTIFIES this Order for immediate appeal. Pending Mobil's appeal, the Court STAYS in part and GRANTS in part discovery against Mobil. Finally, the Court EXTENDS Order No. 2 to Mobil.

APPENDIX C

[Entered Apr. 3, 1998]

UNITED STATES DISTRICT COURT

S.D. Texas

Corpus Christi Division

MDL Docket No. 1206

In re LEASE OIL ANTITRUST LITIGATION (NO. II).

ORDER NO. 2

On this day, the Court sua sponte enters this Order of Temporary Injunction which enjoins all Defendants[1] (except for

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[1] "All Defendants" includes all Defendants already in MDL 1206 (Amerada Hess Corp., Amoco Oil Corp., Amoco Production Company, Apache Corporation of Delaware, Atlantic Richfield Company, BP Oil Inc., BP Exploration and Oil Inc., Burlington Oil & Gas Company, Chevron USA Inc., Citgo Petroleum Corp., Coastal Corp., Coastal States Trading Inc., Conoco Inc., Diamond Shamrock Refining Company L.P., Enron Corp., Enron Oil & Gas Company, EOTT Energy Operating Limited Partnership, EOTT Energy Corp., Exxon Corp., Fina Oil & Chemical Company, Gulf Oil Corp., Hunt Oil Company, Kerr-McGee Corp., Kerr-McGee Refining Corp., Koch Industries Inc., Koch Oil Company, Louisiana Land & Exploration Company, Marathon Oil Company, Mobil Oil Exploration and Producing Southeast Inc., Occidental Petroleum, Ohio Oil Company f/k/a Marathon, Oryx Energy Company, Oxy USA Inc., Palmer Petroleum Inc., Pennzoil Company, Phibro Inc., Phibro Energy USA Inc. a/k/a Basis Petroleum Inc., Phillips Petroleum Company, Pride Oil Company Inc., Pride Companies L.P., Pride Refining Inc., Scurlock Permian Corp., Shell Oil Company, Shell Oil Products Company, Shell Western Eastern & Pacific Inc., Sun Company Inc. (R&M) f/k/a Sun Refining & Marketing Company, Texaco Inc., Texaco Exploration and Production Inc., Texaco Trading and Transportation Inc., Unocal Corp., Union Oil Company of California,

Mobil Oil Corporation)[2] and all named Plaintiffs in the above-styled multidistrict litigation[3] from entering settlement agreements—either collectively or separately—which purport to settle any of the federal antitrust claims in this litigation without first notifying this Court and receiving the Court's approval of the settlement. This Order shall remain in effect until further order of this Court.

I. JURISDICTION

The Court has jurisdiction over the consolidated cases in this multidistrict litigation pursuant to the Judicial Panel on Multidistrict Litigation's transfer order of January 14, 1998, and 28 U.S.C. §§ 1331, 1332, 1367 and 1407.

II. FACTS & PROCEEDINGS

In April 1996, plaintiff royalty payees filed a class action suit in the Southern District of Texas, *The McMahon Foundation et al. v. Amerada Hess Corp., et al.*, against 39 oil companies, alleging that the companies, in violation of § 1 of the Sherman Act, conspired for over a decade to artificially

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Union Pacific Resources Company) and all other Defendants in *Guerra et al. v. Texaco Exploration and Production Inc. et al.*, M-98-37 (Texaco Pipeline Inc, Four Star Oil & Gas Company).

[2] Mobil Oil Company will be excluded from this Order pending the Court's resolution of Mobil's motions requesting that the Court give full faith and credit to the global settlement agreement which Mobil entered into in Alabama state court. See infra at pp. 3-4.

[3] This includes all of the named Plaintiffs in the following cases which presently compose MDL-1206: *Randolph Energy, Inc. v. Amerada Hess Corp., et al.* C-98-041, *McMahon Foundation, et al., v. Amerada Hess Corp., et al.* C-98-048, *Stanley, et al., v. Gulf Oil Corporation, et al.*, C-98-068, *Nicholson, et al. v. Marathon Oil Company, et al.*, C-98-110, and *Cameron Parish School Board, et al. v. Texaco, Inc., et al.*, C-98-111, and *MacMahon Foundation et al. v. Occidental Petroleum et al.*, C-98-130. This also includes the named Plaintiffs in *Guerra et al. v. Texaco Exploration and Production Inc. et al.*, M-98-37, which has already been transferred to this Court and which the Court intends to consolidate with MDL-1206.

depress oil production royalty payments owed to the putative class members. In that same month, a separate group of plaintiffs brought a class action suit in state court, *Cameron Parish School Board v. Texaco, Inc.*, against fifteen oil companies alleging violations of Louisiana law due to the underpayment of royalties owed for production of oil on properties in Louisiana. *Cameron Parish* was timely removed to federal court. Subsequently, three other groups of plaintiffs brought separate suits based on similar royalty underpayment allegations in federal court and based on state law violations (viz., *Randolph Energy, Inc. et al. v. Amerada Hess Corp. et al.*, *Stanley v. Gulf Oil Corp. et al.*, *Nicholson et al. v. Marathon Oil*).

In September 1996, a separate group of plaintiffs filed a putative class action in Alabama state court, *E.M. Lovelace et al. v. Amerada Hess Corporation et al.*, based on similar royalty underpayment allegations, asserting that 24 oil company defendants violated the separate antitrust statutes of each of the fifty states. *Lovelace* was removed to federal court, and the plaintiffs sought a remand, arguing that federal antitrust claims were not at issue in their case since their claims were based strictly on state statutes. Notably, federal antitrust claims may only be brought in federal court. *Marrese v. American Academy of Orthodpaedic Surgeons*, 105 S.Ct. 1327, 1331 (1985); *Freeman v. Bee Mach. Co.*, 319 U.S. 448, 451 (1943); *General Investment Co. v. Lake Shore Ry.*, 43 S.Ct. 106, 116-17 (1922).

The federal court remanded *Cameron Parish* since it appeared that neither diversity nor federal question jurisdiction existed. Shortly after the remand and despite their representations that the federal antitrust claims were distinct from their own state law causes of action, the *Lovelace* plaintiffs agreed to a global settlement agreement with Mobil Corporation which released all claims—both state and federal—of a nationwide class of royalty payees. In May 1997, Mobil and counsel for *Lovelace* plaintiffs announced the terms of the

settlement: in exchange for the nationwide class' release of all federal and state claims based on royalty underpayments, Mobil would pay $15 million to the class' (with over 40% guaranteed to the attorneys)[4], would alter its method of determining royalty payments in the future, and would allow counsel for plaintiffs access to certain documents and Mobil employees. After a fairness hearing, the Alabama state court approved both a settlement class and the proposed settlement in December 1997.

Meanwhile, the Judicial Panel on Multidistrict Litigation ("JPML") was considering whether and where to consolidate the five similar federal actions which were pending and involved royalty underpayment allegations. In November 1997, counsel for plaintiffs and the defendants in *McMahon* (the first case brought on behalf of a nationwide class) filed a global settlement with the federal district court in Houston. Before the Houston court could consider the settlement, *McMahon* and the other federal cases were transferred to this Court pursuant to 28 U.S.C. § 1407 for coordinated and consolidated proceedings.

III. DISCUSSION

A. Jurisdictional Complexities and Conflicts

As the Manual for Complex Litigation, Third, ("MCL") recognizes, the "pendency of related actions in state and federal courts can cause jurisdictional complexities and conflicts." MCL, § 31.32. From the beginning, this case has been wrought with such jurisdictional conflicts because various groups of plaintiffs have brought separate actions in disparate forums citing different legal authority while, ultimately, all groups base their claims on the same alleged wrongful conduct: the underpayment of royalties to payees by the major oil companies. While the federal cases have

[4] In comparison, Texaco has settled similar claims with the state of Louisiana for $400 million and with New Mexico for $4.1 million.

been consolidated in this Court, several separate actions are still being pursued in state court—most notably the *Lovelace* case in Alabama—and those parallel proceedings need to be harmonized with the federal multidistrict litigation in order to ensure an equitable resolution of both the state and federal claims.

At this preliminary stage, it is evident that the federal claims in *McMahon* are stronger than the state law claims in *Lovelace* which are based on the antitrust statutes of all fifty states. First, although all states have some sort of antitrust statute, their provisions frequently differ. Antitrust Law Developments, 4th Ed. Ch. IX.C at 742. Some provisions are directly comparable to §§ 1 and 2 of the Sherman Act while some compare to §§ 3 and 7 of the Clayton Act and the Robinson-Patman Act. *Id.* Further, "states vary widely in their exemptions with many states having exemptions pertaining to particular industries." *Id.* at 743. While the federal statutes provide for treble damages, some state statutes do not, and some allow treble damages only when the court finds that the violation was flagrant. *Id.* at 743-44. Finally, the sheer complexity of managing claims under so many different statutes and caselaw makes *Lovelace* a less feasible vehicle than *McMahon* for prevailing on the antitrust action since the litigation costs to plaintiffs' counsel will necessarily be much greater in *Lovelace*.

The very fact that the claims are quite possibly weaker in *Lovelace* renders the state court case prone to an inadequate, or possibly even collusive, settlement: since the plaintiffs in Alabama state court are in a relatively weak bargaining position, those plaintiffs might be motivated to accept a settlement which reflects only the value of their lesser claims, rather than the value of the exclusive federal claims. Moreover, the state court litigants might be motivated to settle the exclusive federal claims at the same time and possibly for a bargain price since the exclusive federal claims are worthless to the state court plaintiffs, except for purposes of settle-

ment.[5] In these circumstances, the self-interest of the state court litigants themselves might drive the case towards an inadequate settlement which even the most fastidious court might feel itself bound to approve when both parties are insisting that it is a fair resolution. For this simple reason, it has been recognized that, when there are parallel federal and state cases, "[i]f the federal claims are stronger than the state claims, a global settlement in state court is not proper. The dangers of a 'hijacking' of the federal claims are too high, and the state's interest is too low, to justify state court approval of a global settlement that is opposed by the federal plaintiff." Marcel Kahan and Linda Silberman, *Matsushita and Beyond: The Role of State Courts in Class Actions Involving Exclusive Federal Claims*, 1996 Supreme Court Rev. 219, 260-61 (1996).

As mentioned, federal law confers exclusive jurisdiction over federal antitrust claims in federal courts, and the JPML has ordered that all such claims relating to the alleged underpayments of oil royalties be consolidated in this Court pursuant to § 1407. To allow these federal claims to be "hijacked" by a global settlement in state court—where the claims could not even be adjudicated—would effectively destroy those federal rights and the federal procedures designed to safeguard them and to enable their orderly resolution.

As explained in the MCL, the Federal Rules of Civil Procedure 16, 26, 37, 42 and 83 contain "numerous grants of authority that supplement at court's inherent power to manage litigation." MCL, § 20.1; *see also*, *Chambers v.*

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[5] The Supreme Court, in *Matsushita Elec. Indus. Co. v. Epstein*, 116 S.Ct. 873, 877-78 (1996) held that, "a judgement entered in a class action, like any other judgment entered in a state judicial proceeding, is presumptively entitled to full faith and credit under the express terms of the [Full Faith and Credit] Act" and that class action settlements reached in state court could extinguish claims exclusively within the jurisdiction of federal courts.

NASCO, Inc., 111 S.Ct. 2123, 2132-37 (1991). Specifically, Rule 16(c)(12) authorizes judges to adopt "special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems" early in the litigation. Fed.R.Civ.P. 16(c) (12); MCL, § 20.1. In light of this mandate to adopt special procedures to better manage complex litigation, the Court, acting pursuant to the All Writs Act, will enter a preliminary order designed to avoid the conflicts that will inevitably arise if parties in a parallel state action prematurely enter into a settlement agreement which purports to release the exclusive federal antitrust claims which are now before this Court.

B. Federal Courts' Authority to Enjoin Parties Before It

The All Writs Act, 28 U.S.C. § 1651(a), confers "extraordinary powers" upon federal courts, *ITT Community Dev. Corp. v. Barton*, 569 F.2d 1351 (5th Cir. 1978):

> The Supreme Court and all courts established by this Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651(a). With respect to this Act, the Supreme Court has emphasized that " 'a federal court may avail itself of all auxiliary writs as aids in the performance of its duties, when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it.' " *United States v. New York Tel. Co.*, 98 S.Ct. 364, 372 (quoting *Adams v. United States ex rel. McCann*, 63 S.Ct. 236, 238 (1942)).

While these powers are extraordinary, they are also "firmly circumscribed." *ITT Community*, 569 F.2d at 1358. The Fifth Circuit has instructed that the scope of a federal court's power under the All Writs Act "depend[s] on the nature of

the case before the court and the legitimacy of the ends sought to be achieved through the exercise of the power." *Id.* at 1358-59. A court may not rely on the Act to enjoin conduct that is "not shown to be detrimental to the court's jurisdiction," but rather any order under the Act must be "directed at conduct which, left unchecked, would have had the practical effect of diminishing the court's power to bring the litigation to its natural conclusion." *Id.* at 1359.

Even though powers under the Act are in general narrowly circumscribed, the Act frequently enables a court to issue preliminary orders which will quell a threat to the proper exercise of its jurisdiction. For example, the Supreme Court has recognized that, even when jurisdiction only potentially exists, the Act grants courts the power to "issue status quo [injunctive] orders to ensure that once its jurisdiction is shown to exist, the court will be in a position to exercise it." *ITT Community*, 569 F.2d at 1359, n.19 (citing *FTC v. Dean Foods Co.*, 86 S.Ct. 1738, 1742-43 (1966)). Similarly, when the Act authorizes protective action, a court may enjoin not only parties to the action, but non-parties as well. In those circumstances, the Supreme Court has stated that "[t]he power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice." *New York Telephone*, 98 S.Ct. at 373.

Here, the Court clearly exercises jurisdiction over the claims and the parties, and simply must take preliminary action to protect its jurisdiction over the exclusively federal antitrust claims: the Court needs to act in order to prevent the parties before it from possibly pursuing an inadequate or collusive settlement in state courts which would release the apparently stronger claims in the instant case. In sum, both the "nature of the case" and the "legitimacy of the ends"

warrant action by this Court under the Act. *ITT Community*, 569 F.2d at 1358-59. The MDL case features exclusive federal claims which entitle a prevailing plaintiff to treble damages. 15 U.S.C. § 15(a). The antitrust allegations raise complex legal issues and will entail extensive discovery, and the resolution of the case will impact the rights of thousands of royalty owners across the nation and could have a significant financial impact on the entire oil industry. If an effort by the defendants to reach an inadequate or collusive settlement in state courts is "left unchecked," then this court will be absolutely prevented from "bring[ing] the litigation to its natural conclusion." *ITT Community*, 569 F.2d at 1359. For these reasons, the All Writs Act authorizes this Court to enter an injunctive order against the parties in order to preserve its jurisdiction over this MDL litigation.

C. Appropriate Action Pursuant to All Writs Act

As shown below, two circuit courts have indicated that, pursuant to the All Writs Act, the Court may enjoin all defendants and all named plaintiffs in this MDL case from entering into a settlement agreement releasing the federal claims without first notifying this Court and receiving the Court's approval.

In *In re General Motors Corporation Pick-up Truck Fuel Tank Products Liability Litigation*, 134 F.3d 133 (3rd Cir. 1998), class representative plaintiffs across the country brought class action suits against General Motors alleging a design defect in pick-up trucks. All federal cases were consolidated in one federal district court while several cases remained pending in state court. Because the Anti-Injunction Act, 28 U.S.C. § 2283, would not allow the district court to enjoin the state court itself in the circumstances, the court refused to enjoin the parallel state court proceedings when the plaintiffs warned that a state court settlement was imminent which would release the claims in federal court. The Third Circuit affirmed the district court's refusal to enjoin the

state court. However, in doing so, the Third Circuit also indicated that—notwithstanding the limitations of the Anti-Injunction Act—the district court could have entered an injunction against the parties over whom it had personal jurisdiction, even before the federal court had entered an order which required protection from the potential interference of a state court settlement. The Third Circuit stated: ". . . it is conceivable that we could direct the district court to enjoin those 200 plaintiffs [over whom the district court had personal jurisdiction] from pursuing their state damage remedies in Louisiana [state court]." *In re General Motors*, 134 F.3d at 141 n.2.

The Third Circuit decided not to enjoin the plaintiffs from pursuing claims in state court because that relief had not been requested and also because it would have been futile. Nevertheless, the Third Circuit's dicta is significant for two reasons: (1) it confirms that, where jurisdiction over federal MDL class action litigation[6] is threatened by a potential settlement of the same claims in a state court, the federal court can act pursuant to the All Writs Act even when the federal court has not already entered an order that requires preservation; *see also In re Baldwin-United Corp.*, 770 F.2d 328, 335 (2d Cir. 1985) (The All Writs Act empowers a federal court to issue an injunction against actions in state court "even before a federal judgment is reached . . ."); and, (2) it indicates that, even in circumstances where the federal court cannot enjoin the state court proceedings, the federal court nevertheless can enjoin the parties over whom it has personal jurisdiction.

The Third Circuit does not discuss whether the court's power to enjoin parties in these circumstances extends equally to plaintiffs and defendants over whom it has per-

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[6] Notably, in *In re General Motors*, the federal cases did not even involve claims of exclusive federal jurisdiction, but rather ordinary tort claims or federal consumer protection statutes.

sonal jurisdiction. Instead of explicitly discussing this point, the Third Circuit simply confirms the propriety of enjoining plaintiffs, but its rationale for exercising injunctive power over the representative plaintiffs applies equally well to defendants. The Third Circuit reasoned that, since the district court had personal jurisdiction over the 200 named plaintiffs in the federal suit, it had the power to enjoin them. A district court exercises personal jurisdiction over defendants, just as surely as it exercises jurisdiction over the representative plaintiffs in a class action suit, and therefore it presumably has the same power to control their actions which impact upon the litigation in federal court. Thus, it can be assumed that the Third Circuit's approval of injunctions against named plaintiffs in these circumstances applies equally to defendants in the same circumstances.

In fact, the Tenth Circuit appears to have subsequently made this assumption that both parties before the court are treated the same in such circumstances—that is, both the plaintiffs and defendants may be enjoined from undermining the claims before the federal court. In *Hillman v. Webley*, 115 F.3d 1461 (10th Cir. 1997), the Tenth Circuit held that the federal district court overstepped the bounds of the All Writs Act when it depended on the Act as an independent source of jurisdiction to remove otherwise unremovable state law claims from a parallel state action and to consolidate them with its own MDL litigation.[7] Nevertheless, the court stated that, even if the district court could not remove the disruptive state claims, the district court "undoubtedly had the authority under the All Writs Act to enjoin parties before it from pursuing conflicting litigation in the state court, but unfortunately it did not pursue that route." *Hillman*, 115 F.3d at 1469. In *Hillman*, the district court had already approved a

[7] Other circuits have approved of this use of the All Writs Act. *See e.g.*, *In re Agent Orange Product Liability Litigation*, 996 F.2d 1425 (2d Cir. 1993); *In re VMS Securities Litigation*, 103 F.3d 1317 (7th Cir. 1996).

partial settlement agreement that needed protection, but that fact does not alter the significance of the Tenth Circuit's statement: given that the court had a justified purpose for invoking the All Writs Act, the court's power over the parties extended equally to the defendants and the plaintiffs, such that the court could enjoin both parties from pursuing "conflicting litigation."

One commentator has succinctly described the scope of a federal court's powers under the All Writs Act when it has jurisdiction over parties in a federal case and when parallel state court cases threaten to undermine the federal claims: "Although courts . . . normally lack the power to enjoin absent class members (or their attorneys) from bringing suit in another forum, they do have power over the parties before them. This includes the power to enjoin the defendant from entering into a settlement class action with another plaintiff in another forum, at least without notice to the court and its approval." John C. Coffee, Jr., *Class Actions: Interjurisdictional Warfare*, N.Y. Law J. 5 (1997). Such preventive action is precisely what is needed in the instant MDL litigation.

D. Personal Jurisdiction over the Defendants

The JPML has already consolidated six federal cases in this MDL litigation, and it is likely that more tag-along cases will be added in the future. The court emphasizes that it enters the following Order—which is recited below in Section IV—against all Defendants in all actions consolidated into MDL 1206 over whom the court has jurisdiction.

Further, the Court FINDS that it has jurisdiction over all Defendants named in *Randolph Energy, Inc. v. Amerada Hess Corp., et al.*, C-98-041, *McMahon Foundation, et al. v. Amerada Hess Corp., et al.*, C-98-048, *Stanley, et al., v. Gulf Oil Corporation, et al.*, C-98-068, *Nicholson, et al. v. Marathon Oil Company, et al.*, C-98-110, *Cameron Parish School Board, et al. v. Texaco, Inc., et al.*, C-98-111, and *McMahon*

Foundation, et al. v. Occidental Corporation et al. because either (1) the defendants have filed an answer in one of these cases; or, (2) the defendants have failed to file an answer within the time allowed by Federal Rules of Civil Procedure 12(a). Moreover, many of defendants have urged the transferor court in Houston to approve their global settlement of these claims.

The second category of defendants bears some explanation because of the twisted path of the litigation in *McMahon*. In that case, the plaintiffs filed their original complaint in April 1996, and, in May, the majority of the defendants filed Rule 12(b)(6) motions to dismiss, essentially arguing that the complaint was too vague to state a claim. In March 1997, the magistrate judge recommended that the plaintiffs be required to file a more definite statement, and, in October 1997, the court adopted the magistrate's recommendation. On October 30, 1997, the plaintiffs filed their first amended complaint which was over 70 pages and included attachments which served as substantial support for their allegations.

The defendants then had ten days to respond to the first amended complaint. Fed.R.Civ.P. 12(a) (4) (B) ("if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement"); *Mason v. Lister*, 562 F.2d 343, 345 (5th Cir. 1977). On November 7, instead of responding, the parties stipulated that the defendants did not have to respond until December 10, 1997, and the Houston court approved the extension. On December 3, the parties stipulated to extend the deadline another month, and the Houston court did not rule the unopposed extension. Similarly, the parties entered stipulations to extend this response deadline on January 6, January 21, and February 6. Most recently, the parties filed a stipulation on March 6 to extend the response deadline to April 10. Except for the stipulation of November 1997, none of these stipulations have been approved by the transferor court in Houston or by this Court.

Under Federal Rules of Civil Procedure 6 (b) , "the parties may not agree to an extension of time without court approval." *In re Sonoma V*, 703 F.2d 429, 431 (9th Cir. 1983); *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 130 F.2d 185, 187 (3d Cir. 1942) (en banc); *U.S. v. Martin*, 395 F.Supp. 954, 960 (D.C.N.Y. 1975); *Caraballo v. Lykes Bros. S.S. Co.*, 212 F.Supp. 216, 220 (D.C.Pa. 1962) ("Stipulations made without approval of court, purporting to extend the time for pleading, are ineffective"); 4A C. Wright & A. Miller, Federal Practice and Procedure § 1165, at 488 (". . . a stipulation by the parties for an extension of time is ineffective if it is not also embodied in an order of the court"). Where a defendant fails to respond within the time required by Rule 12(a), it is within the district court's discretion to enter a default judgment against the defendant. *Mason*, 562 F.2d at 345. All of the defendants in *McMahon* have been involved in this litigation since May 1996, and the defendants which have not filed answers to the first amended complaint of October 1997, have clearly failed to meet the response deadline set by Rule 12(a)(4)(B). As explained, their attempts to stipulate an extension of the Rule 12(a) response deadline are ineffective unless approved by the court, and, except for the first one, their stipulations were not approved. Accordingly, due to these defendants' failure to respond, the Court has the power to enter a default judgment against them. it follows, a fortiori, that the Court has the lesser power of simply entering an injunctive order against them pursuant to the All Writs Act.[8]

Moreover, the fact that the Court exercises such jurisdiction over the *McMahon* defendants must have been anticipated by those defendants since the Court has notified them that the Court disregards their filings which stipulate to an extension of deadlines. The Court's Order of March 19, 1998, explicitly instructed the parties that: "Any attempt by

[8] As mentioned above, a federal court even has the power to enjoin non-parties under the All Writs Act in certain circumstances.

the parties to modify the response times, answer times, etc. unless approved by this Court shall be disregarded." (Order at 4-5). Thus, the defendants have had more than ten days' notice that the Court considered their stipulations ineffective, and the defendants have failed to file a response or answer within the ten day limit of Rule 12(a)(4)(B).

Accordingly, the Court FINDS that it exercises the requisite jurisdiction to enter an injunctive order against all defendants in this MDL litigation.

IV. INJUNCTIVE ORDER

The Court FINDS that it is necessary to enter the following injunction in aid of its jurisdiction. Accordingly, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), the Court ENJOINS all named Plaintiffs and all Defendants in the above-styled MDL litigation (except for Mobil Oil Corporation)[9] from entering—collectively or separately—into any settlement agreement which releases or purports to release the federal antitrust claims brought in this litigation, without first notifying this Court of the settlement agreement and without first obtaining the Court's approval of said agreement. This Order is a temporary injunction but will remain in effect until further order of the Court.

ENTERED on this the ___ day of April, 1998.

/s/ Janis Graham Jack
JANIS GRAHAM JACK
UNITED STATES DISTRICT JUDGE

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[9] For the Court's explicit listing of the parties, see supra notes 1 through 3.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40840

In re LEASE OIL ANTITRUST LITIGATION (NO. II).

"ALL PLAINTIFFS,"
Plaintiff-Appellee,

v.

"ALL DEFENDANTS,"
Defendant-Appellant.

Filed Feb. 17, 2000

ON PETITION FOR REHEARING
AND REHEARING EN BANC

The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

ENTERED FOR THE COURT:

/s/ Patrick E. Higginbotham
United States Circuit Judge

APPENDIX E

STATUTORY PROVISIONS INVOLVED

Title 28, United States Code

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Code of Alabama
Title 12. Courts.
Chapter 21. Evidence and Witnesses

§ 12-21-109. Effect of written receipts, releases, discharges, and judgments entered pursuant to pro tanto settlements generally.

All receipts, releases and discharges in writing, whether of a debt or record, a contract under seal or otherwise, and all judgments entered pursuant to pro tanto settlements, must

have effect according to their terms and the intentions of the parties thereto.